TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1903.

No. [illegible] 119.

ALVIN L. LEIGH, PLAINTIFF IN ERROR,

vs.

HENRY S. GREEN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF [illegible].

FILED AUGUST [illegible], [illegible].

(18,630.)

(18,650.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 422.

ALVIN L. LEIGH, PLAINTIFF IN ERROR,

vs.

HENRY S. GREEN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

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LEIGH
v.
GREEN. } No. 9838.

Pleas before the supreme court of the State of Nebraska at a term thereof begun and holden at the capitol, in the city of Lincoln, in said State, on the 7th day of January, A. D. 1902.

Present: Hon. J. J. Sullivan, chief justice, Hon. Silas A. Holcomb, judge, Hon. S. H. Sedgwick, judge.

Attest: LEE HERDMAN, *Clerk.*

Be it remembered, that hereto-fore to-wit; on Jan. 17, 1898, there was filed in the office of the clerk of said supreme court a certain transcript in words and figures following to-wit:

STATE OF NEBRASKA, } ss
County of Knox, }

Pleas before the district court of Nebraska at a term holden in the county of Knox on the nineteenth day of October, 1897, before the Honorable John S. Robinson, judge of the ninth judicial district of the State of Nebraska.

In the District Court of Knox County, Nebraska.

ALVIN L. LEIGH, Plaintiff,
vs.
H. S. GREEN, Whose Real Christian Name is Unknown, Defendant. } Petition.

1. The plaintiff complains of the defendant for that, on the seventh day of June 1894, he was, and fro- thence hitherto has been, seized in fee simple, and has, at all said times, been in possession of
2 the following real estate situated in the county of Knox and the State of Nebraska, to-wit: The north-east quarter, and the north-west quarter of section number twenty-seven (27), and the south-west quarter and the north-west quarter and the south half of the south-east quarter of section number twenty-two (22), all in township number thirty-one (31) north of range three (3) west of the sixth principal meridian.

2. That the plaintiff acquired his said title through the several successive conveyances following, that is to say: on the twenty-fourth day of November 1880, one Algernon S. Patrick commenced an action in the district court of Knox county, Nebraska, against Erwin Davis to recover against him upon said claims and demands set out in said petition, at which time, the said Erwin Davis, was the record owner of the described land; and on the same day the said Algernon S. Patrick caused an attachment to be issued in said action, and the same was levied on the above described lands, to-

gether with other lands, at that time belonging to the said Erwin Davis, that on the 18th, day of April 1882, said action was, upon the application of said Erwin Davis, removed to the United States circuit court for the district of Nebraska, that said action was afterwards, on the 21st day of January, 1890, prosecuted to final judgment and decree, in the said United States circuit court, and subsequently an order was obtained from the said court to sell the property theretofore attached in said action, and said attached lands, including the land described in this petition, were, by the United State- marshall, sold upon said order of sale, to one Lionel C. Burr, and on the 19th day of May 1894, the said Lionel C. Burr received from the United States marshall his deed for said described lands together with other said lands by him purchased at said sale, which said deed was by him filed for record and recorded in the office of the county clerk of said Knox county of the 26th day of May 1894. That on the 19th day of May 1894 the said L-onel C. Burr and his wife Aldana,
3 conveyed this land described in this petition, together with other lands, by warranty deed, to J. C. Crawford and Richard C. Peters, and the same was by them filed for record and recorded in the office of the county clerk of Knox county on the 28th day of May, 1894.

That on the 7th day of June 1894, the said James C. Crawford and his wife Kate Crawford, and Richard C. Peters and his wife Maggie L. Peters conveyed the land herein described to the plaintiff by warranty deed the same was by said plaintiff filed for record recorded in the office of the county clerk of Knox county on the — day of June 1894 in record — at page —.

3. That notwithstanding the pendency of said action in the circuit court of the United States for the district of Nebraska, and the levy the lien of the attachment upon said land described herein, the Farmers Loan and Trust Company, on the 30th, day of September 1891 without joining any other purchasers and lienholders of said lands above mentioned as parties defendant, commenced a series of actions in the district court of Knox county, Nebraska, against Henry A. Root and the above described land to foreclose five certain certificates of tax sale of the lands described herein, for the delinquent tax due thereon for the year 1896, and in pursuance thereof on the 10th day of November 1891, obtained a decree of foreclosure against said lands in said several actions, for the amount of said taxes, penalties and costs, and costs of suit; and on or about the 10th day of December, 1891, the said The Farmers Loan and Trust Company caused orders of sale to be issued upon said decrees and placed the same in the hands of the sheriff of said Knox county, who, after having advertised said lands for sale as required by law, as
4 he alleges, sold the same on the 16th day of May 1892, made his sheriff's deed of said lands, and delivered the same to the defendant H. S. Green who caused the same to be filed for record and recorded in the office of the county clerk of Knox county in Book M of Deeds at page — and now sets up and claims to all of said lands against the plaintiff, but refuses to commence an action at law to try his title to the same and said deeds are clouds on the

plaintiff's title to said premises, and tends to depreciate the value thereof.

4. The plaintiff alleges, that said certificates of said tax sale and the sheriff's deed of said land, and the decrees of foreclosure against said lands, are void for the following reasons:

(A) It is not stated in said certificates, that said lands were offered at public sale and not sold for the want of bidders before offering the same at private sale.

(B) The place where said lands were sold is not stated in said certificates.

(C) It is stated in said certificates that said lands were sold at a private sale at the court house, whereas said sale should have been made at the treasurer's office.

(D) Said certificates did not have endorsed thereon "Sold for taxes at private sale."

(E) Said decrees, and sheriff's deeds, made in pursuance thereof, were void because the court had no jurisdiction of the defendant to said suit, not subject to matter thereof.

(F) The defendant in said actions, Henry A. Root, was a non resident of the State of Nebraska and the service of summons could not be had upon him in this State, and service was sought to be made upon him by publication; but the plaintiff alleges that no sufficient affidavits were made and filed by the plaintiff, his agent or his attorney in said cause for publication of service.

(G) Said affidavits did not state the object and prayer of
5 the petitions in said action.

(H) Said affidavits are not positively sworn to but were made upon information and belief.

(I) Said affidavits were made and sworn to in the State of Iowa two days prior to the filing of the petitions in said actions.

(J) The only affidavits filed in these cases for publication of service was the following in each case.

STATE OF IOWA, }
Woodbury County, } *ss:*

I, M. J. Sweeley, being first sworn do state that I am the attorney for the plaintiff above named, that this case is one of those mentioned in sections 77, title V, of the Code of Civil Procedure of the State of Nebraska, and is an action relating to real property in said State in which the defendants have or claim a lien or interest actual or contingent, and the relief demanded consists wholly or partially in excluding the defendants from any interests therein; that the defendant Henry A. Root is a non-resident, of said State of Nebraska and that service of summons cannot be made on him within said State, I further state that the owner of the real estate involved in said action and above described *above* is not known: all of which I verily believe to be true.

M. J. SWEELEY.

Subscribed and sworn to before me this 28th, day of September, 1901.

[SEAL.] L. GREENWOOD,
Notary Public.

(K) Said affidavits do not state that any actions had been
6 commenced or petitions filed in any case.

Appraisement.

5. The appraisements made of said lands under said order of sale are invalid for the reasons, first. They were made by the appraisers in the office of a bank, at Bloomfield, Nebraska, several mile- distant from the land, and was not made from actual view. Second. Said lands were not sold for two-thirds of the appraised value of defendant's interests in said lands.

6. The plaintiff is ready and willing, and hereby offers to pay all legal taxes, which are now a lien upon said lands.

Wherefore the plaintiff prays that said certificates of tax sale of said lands, and the decrees of foreclosure of the same, and the sheriff's deeds made in pursuance thereof, may each and all of them be decreed to be null and void, set aside and held for naught; that the defendant, and all persons claiming under him, be perpetually enjoined from setting up or claiming title to said lands, or in any way interfering with the plaintiff'- possession of the same, and for such other relief as equity may require.

ALVIN L. LEIGH,
By McLAUGHLIN & CRAWFORD, *Att'ys.*

STATE OF NEBRASKA, } ss:
Cuming County, }

James C. Crawford being first duly sworn deposes and says that he is one of the attorneys for the plaintiff in the above action; that he has read the foregoing petition and knows each and all of the facts stated therein of his own knowledge, and that the same
7 are true he verily believes.

JAMES C. CRAWFORD.

Subscribed and sworn to before me this 21st, day of September 1894.

[SEAL.] W. A. BLACK,
Notary Public.

I am security for costs in this action.

W. A. BLACK.
J. F. LENGER.

The above bond approved this 6th day of October 1894.

[SEAL.] J. T. LINDSAY, JR.,
Clerk of District Court.

Endorsed: 1341 In district court of Knox county, Nebraska. Alvin L. Leigh *vs.* H. S. Green. Petition. State of Nebraska Knox county. *ss.* Filed this 22nd day of September A. D. 1894. J. T. Lindsay Jr. clerk of the district court.

And afterwards, to wit: on the 18th day of May A. D. 1897, there was filed in the office of said clerk, an amended answer in the words and figures following, to wit:

In the District Court of Knox County, Nebraska.

ALVIN L. LEIGH, Plaintiff,
vs.
H. S. GREEN, Whose Real and Christian Name is Unknown, Defendant. } Amended Answer.

Comes now the defendant H. S. Green, having first obtained leave of the court makes and files this, his amended answer to the plaintiff's petition filed herein.

1. Defendant denies all of paragraph 1 of plaintiff's petition.

8 2. Defendant admits that on or about the 2nd day of November, 1880 one Algeron S. Patrick commenced an action in the district court of Knox county, Nebraska, against Erwin Davis, to recover against him upon certain claims and demands, set out in said petition; that on or about the 18th day of April 1882, said action was upon application of said Erwin Davis, removed to the U. S. circuit court for the district of Nebraska; that said action was afterwards on or about the 21st day of January 1890, prosecuted to final judgment and decree, in the U. S. circuit court, that J. C. Crawford and his wife, Kate Crawford and Richard C. Peters and his wife, Maggie L. Peters attempted to convey the land described in plaintiff's petition, to-wit: the north-east quarter and the north-west quarter of section number twenty-seven (27) and the south-west quarter and the north-west quarter and the south half of the south-east quarter of section number twenty-two (22) all in township thirty-one (31) north range three west of the sixth principal meridian, to Alvin L. Leigh, plaintiff herein, and said deed was filed and recorded in the office of the county clerk of Knox county Nebraska, on the — day of June 1894, in record — on page — Defendant denies each and every other allegation in said paragraph two (2) of plaintiff's petition contain*ing*.

3. This defendant admits that the Farmers Loan and Trust Company on or about the 30th day of September, 1891, without joining any other purchasers and lien holders of said lands above mentioned as parties defendant, commenced a series of actions in the district court of Knox county, Nebraska, against Henry A. Root and the above described land, to foreclose certain certificates of tax sales of land described herein, for the delinquent tax due thereon for the years — and in the pursuance thereof, on or about the 10th, day of

9 November 1891, obtained a decree of foreclosure against said lands in said several actions, for the amount of said taxes penalties and costs and costs of suit, and on or about the 10th

day of December 1891, the said Farmers Loan and Trust Company, caused orders of sale to be issued upon said decree and placed the same in the hands of the sheriff of said county, he after having advertised said lands for sale as by law required, sold the same to the defendant H. S. Green, and on or about the 16th day of May, 1892, obtained a sheriff's deed of said land and delivered the same to the defendant H. S. Green, who caused the same to be filed for record and recorded in the office of the county clerk of Knox county, in Book M of Deeds at page — and now sets up and claims title to all said lands against the plaintiff.

4. Defendant denies each and every allegation in said paragraph three (3) of plaintiff's petition contained.

5. Defendant admits that part of paragraph four of plaintiff's petition shown at "1 F 1" viz., the defendant in said actions Henry A. Root was a non-resident of the State of Nebraska, and service of summons could not be had upon him in this State, and service was sought to be made upon him by publication that said affidavits were not positively sworn to and were executed in the State of Iowa immediately prior to the filing of the petitions in said action. Defendant denies each and every allegation in said paragraph four in plaintiff's petition contained.

6. Defendant denies each and every allegation contained in paragraph 5 of plaintiff's petition.

7. Defendant denies each and every allegation in said petition contained, except such facts and allegations as have been herein before expressly and specifically admitted. This defendant denies:

(A) That Alvin Leigh plaintiff herein, is now or ever has been the legal and equitable owner of the north-east quarter and the north-west quarter of section number twenty-seven (27) and the south-west quarter and the north-west quarter, and the south half of the south-east quarter of section number twenty-two (22) all in township thirty-one (31) north of range three west of the sixth P. M. or any part thereof.

(B) Defendant denies that plaintiff ever acquired any title whatsoever, through the several pretended conveyances referred to in plaintiff's petition herewith.

(C) Defendant denies that Algernon S. Patrick ever acquired any lien in and upon the property in controversy by reason of the pretended attachment proceedings referred to in paragraph two (2) of plaintiff's petition.

(D) Defendant denies that Erwin Davis ever had any title of any character whatsoever, *and* in and to the property in controversy in the month of November, 1890, prior thereto or since said date.

(E) Defendant denies that the property in controversy or any part thereof was ever levied upon in said action of Algernon S. Patrick against said Erwin Davis.

(F) Defendant denies that Lionel C. Burr on or about the 21st day of January, 1890, or at any other date ever acquired any interest, lien or claim on and upon said land or any part thereof.

(G) The defendant denies that Lionel C. Burr ever conveyed said land or any part thereof to J. C. Crawford and Richard C. Peters.

8. This defendant allege- and charges the fact to be, that the pretended attachment proceedings under through and by which the plaintiff herein pretends to claim title to the property in controversy, were and are absolutely void and of no effect for the following reasons, viz:

(a) At the time the pretended attachment proceedings was
11 commenced in which Algernon S. Patrick was plaintiff and Erwin Davis was defendant, there was no title neither legal or equitable of record in the office of the county clerk of Knox county, Nebraska, wherein said land was situated then appearing in the name of Erwin Davis.

(b) That said Erwin Davis was a non-resident of the State of Nebraska and no service was obtained upon him nor was any service attempted to be obtained upon him by publication.

(c) And because said pretended affidavits purports to have been made out by Mathewson T. Patrick, whereas Mathewson T. Patrick did not sign said affidavit but one M. T. Patrick in lieu thereof signed said pretended affidavit.

(d) Said pretended affidavit is void because Mathewson T. Patrick says that he is agent for plaintiff above named Algernon A. Patrick whereas in truth and in fact, Algernon A. Patrick was not plaintiff in said action nor in any manner connected therewith.

(e) Said pretended affidavit fails to show that the party purporting to make said affidavit was in any manner authorized, empowered or instructed to make or sign said pretended affidavit.

(f) Said pretended affidavit is void because it fails to show that any petition was on file at the time said pretended affidavit was made; it fails to show that any suit was pending in any court or about to be commenced.

(g) Return to the order of sale is void because it fails to show that any levy, whatever, was made upon the property in controversy herein. It is void because it fails to show that the property which it pretended to attach was occupied.

(h) It was void upon its face because it failed to show that a copy of said order of attachment was left with the occupant of said land.

(i) It was void upon its face because it failed to show that the property which it pretended to attach was not occupied.

12 (j) It was void because it failed to show that notices of said order of attachment were posted upon each of the several tracts of land which it pretended to attach.

(k) It was void because it failed to show that it had appraised the interest of Erwon Davis in and to said tracts and parcels of land or any part thereof.

(l) It was void because it failed to show that two disinterested freeholders of the county were called and upon actual view, appraise- said property.

(m) The pretended order of attachment purporting to have been executed on the 24th day of November 1890, by the pretended return thereof, is fatally defective in this: There is an absolute failute on the part of the return to show that the property described therein was appraised. It does not state that Erwin Davis had any

interest whatever in said property. It does not state that a levy was made upon the interest of Erwin Davis in and to said property or any part thereof. It does not state that Geo. D. Bly an- R. C. Matthews were disinterested residents of said county, nor does it state that said Geo. D. Bly and R. C. Matthews or either of them are resident freeholders. It does not state that certified copies of the pretended order of attachment were posted on each tract or parcel of land levied upon.

(*n*) Said pretended order of attachment was void because no affidavit was on file authorizing the issuance of said pretended order of attachment.

(*o*) Said proceedings were void because the court never acquired jurisdiction in Knox county, Nebraska, to issue an order of attachment because no service was ever had or obtained upon Erwin Davis. Because no appearance was ever entered in said cause, until the 13th day of April 1882.

(*p*) The pretended affidavit for attachment — purports to have been made on the 20th day of November, 1889, is void for the further reason that H. T. Patrick for Algernon S. Patrick and Algernon S. Patrick *was* absent from Douglas county and State of Ne-
13 braska on said date and neither M. T. Patrick nor Mathewson T. Patrick had any right to make an affidavit for attachment in said cause, nor did H. T. Patrick *from* Algernon S. Patrick to institute such proceedings, nor did it show that Algernon S. Patrick was absent from Knox county, Nebraska.

(*q*) Said pretended order is void for the further reason that in making the return thereof it failed to show that the sheriff went to the place where the defendant's property was found and there in the presence of two residents of the county, declared that by virtue of said order he attaches said property at the suit of plaintiff. Nor does the return show that the said sheriff attached said property or any part thereof. Nor does it show that he declares that he attached said property or any part thereof. Nor did he declare that he attached said property at the suit of plaintiff. Nor does it show, nor is it claimed that the said pretended sheriff required two residents of said county to be sworn to appraise the interest of said Erwin Davis in and to said property or any part thereof. Nor was there any value on nor appraisement made by the pretended sheriff or anyone else.

8. This defendant alleges and charges the fact to be that no pretended attachment lien in and to the property in controversy was ever transferred to the U. S. circuit court for the district of Nebraska because no application was ever made thereof by any party to the suit, nor was the question of the pretended attachment levy at any time in any manner ever questioned by Erwin Davis, nor was the same ever urged on the part of Algernon S. Patrick nor was it decided by said court.

9. Defendant further alleges that no judgment was ever entered of record in the circuit court of the United States for the dis-
14 trict of Nebraska, upon a pretended attachment levy of the said Algernon S. Patrick against Erwin Davis. That the

only judgment secured in said cause was a general judgment of for the sum of $65,000.00 rendered on the 28th day of January 1890, which said judgment was obtained in the circuit court of the United States for the district of Nebraska, held at Lincoln in Lancaster county Nebraska, and no transcript of said judgment was ever filed of record in Knox county, Nebraska and never in any manner became a lien upon the property in controversy, nor was it notice of any pretended of any claim of Algernon S. Patrick against said land or any part thereof, nor was there a copy of the pretended return to any pretended order of attachment in the district court of Knox county, Nebraska ever filed in the office of the county clerk of Knox county Nebraska purporting to show a levy of any kind or character in and upon said land or any part thereof. Nor was any *lis pendens* notice filed in the county clerk's office of Knox county Nebraska in said cause.

10. This defendant further answering, alleges and charges the fact to be, that the petition of plaintiff filed herein fails to state facts sufficient to constitute a cause for action against this defendant or any grounds for equitable relief therein.

11. This defendant further answering any by way of cross-petition against the plaintiff herein, alleges and charges the fact to be, that he is now and during all the time mentioned from the inception of this suit and for many years prior thereto has been a resident, citizen of the State of Iowa in the U. S. of America, and the plaintiff herein is a resident citizen of the State of Nebraska, of the U. S. of America.

15 12. That on or about the 10th day of November, 1891, at a regular term of the district court holden within and for Knox county, Nebraska, the Farmers Loan and Trust Company a corporation duly and legally incorporated under and by virtue of the laws of the State of Iowa and doing business in the State of Nebraska, and having power as such corporation and the right to invest in tax sale certificates, to buy, own and control real estate, sue and be sued within the State of Nebraska, recovered a number of judgments and decrees of foreclosure upon tax liens against Henry A. Root and certain lands therein described one tract of land of which is as follows: The north-west quarter of section twenty-two (22) in twp. 31, range 3 west, for the sum of $96.65 and costs of suit taxed at $23.83 and $9.65 attorneys' fees, which said judgment was obtained by reason of the Farmers Loan and Trust Company foreclosing a tax lien against said land for delinquent taxes then due and owing upon the said land, said taxes having been sold as by law required as being delinquent; and having been purchased by the said Farmers Loan and Trust Company and owned by it. Said judgment further provides that upon default of the payment of the judgment and decree, that the sheriff of Knox county should cause said land to be appraised, advertised and sold according to law, and default having been made therein, an order of sale was duly issued to the sheriff of Knox county, Nebraska, and as therein commanded, the sheriff levied upon, appraised advertised and sold said property as upon execution and according to law, and this answering defendant on

this second day of January 1892, purchased said property for the sum of $415.00 which was more than two-thirds of the appraised value of said premises, and paid in cash to the sheriff, the said sum of $415.00 and thereby became the equitable owner in and to said premises and every part thereof to the extend of said sum of money, and that
16 afterwards, to-wit; on the 23rd day of April, 1892 in open court, said sale was duly and legally confirmed, and this answering — thereby became the legal and equitable owner of the said north-west quarter of section 22, twp. 31, north, range 3 west of the 6th P. M. and immediately thereafter entered upon and took actual, open notorious and exclusive possessions of said premises and made lasting and valuable improvements thereon to the amount of $320. and on or about the 14th day of May, 1892 Charles Crockett as sheriff of Knox county, Nebraska, executed to the defendants a deed to said premises and immediately thereafter said deed was duly and legally recorded in the office of the county clerk, of Knox county, Nebraska, in Book M. of Deeds on page 175. That at said November term of court, the Farmers Loan and Trust Company in the same manner and form and upon a similar cause of action as hereinbefore stated — against Henry A. Root and the northwest quarter of section 22 awarding a re-statement here that the same may not be a repitition herein, the said company obtained a judgment of foreclosure and order of sale against Henry A. Root and the south half of the south-east quarter of section 22, twp., 31, north range 3 west for the sum of $49.42 and costs of suit, which was then the valid tax lien upon said land and costs of suit, taxed at $21.23 and $4.94 attorneys' fees, and default having been made, said premises were in accordance with decree of said court, sold as upon execution and this answering defendant purchased the same for the sum of $245.00 in cash, which this answering defendant paid to the sheriff of Knox county, Nebraska, at the time of said sale, and thereby became the equitable owner of said premises to the amount of said money, and the said premises were afterwards in open court in the April term
17 thereof 1892 duly confirmed in this answering defendant, and the sheriff of Knox county, ordered to convey said premises in fee simple to this answering defendant, which he afterwards did, on the 16th day of May 1892, and said deed was thereafter filed for record in the office of the county clerk of Knox county Nebraska, in Book M. on page 179, and ever since said date this answering defendant has been the legal and equitable owner of said premises.

(c) That at said November term of court, 1891, the said Farmers Loan and Trust Company for delinquent taxes then due and owing it which were valid liens against the south-west quarter of section 22, twp. 31, range 3 east of the 6th P. M. it recovered a judgment and decree of foreclosure against said land and Henry A. Root, for the sum $93.42 and costs of suit taxed at $23.83 and $9.00 attorney fees and upon default thereof in the payment of said judgment and decree, said premises were sold upon an order of sale as by law required, and your answering defendant being the highest and best bidder therefor, bid in said property for the sum of $490/00 which was more than two-thirds of the appraised value thereof, and this

defendant thereby became the equitable owner of said premises to the amount of said sum that this answering defendant paid the said sum of money to the sheriff and that said sale was duly and legally confirmed in open court at the regular term thereof in 1892, and the sheriff of Knox county, was ordered to convey said premises in fee simple to the defendant, which he afterwards did on the 16th day of May, 1892, and this answering defendant became the legal and equitable owner of said premises; that this defendant immediately thereafter took open, actual, notorious and exclusive possession of said premises and made lasting and valuable improvements
18 thereon; that said deed was duly filed for record on the — day of —— in Book M. of Deeds on page 170 in the office of the county clerk of Knox County, Nebraska.

(*d*) That at the said November term of court in 1891, for delinquent taxes then due and owing the Farmers Loan and Trust Company from the north-west quarter of section 27, twp. 31, range 3 west of the 6th P. M. which said taxes were valid and legal assessments thereon, and which had been sold to the said loan and trust company according to law, recovered a judgment and decree of foreclosure for the sum of $96.65 costs of suit taxed at $23.83 and $9.66 attorneys' fees against said land and Henry A. Root, and default having been made in the payment thereof, said premises on order of the court, were seized appraised and as the law requires, sold, and this answering defendant purchased the same, he being the highest bidder therefor, having bid and paid the sum of $490.00 in cash to the said sheriff as by law required, and thereby became the equitable owner of said premises to the amount of said sum, and afterwards at the April term of said court in 1892 said premises and the sale thereof were confirmed in this answering defendant and the said sheriff was ordered to convey the premises in fee simple to this answering defendant which he afterwards did, on the 16th, day of May 1892, this answering defendant thereby became the legal and equitable owner of said premises and this answering — immediately thereafter took actual, open, exclusive and notorious possession of said premises and immediately thereafter began to make valuable and lasting improvements thereon, and improved said property to the amount of $1440. that said deed was duly and legally filed for record in the office of the county clerk of Knox county, Nebraska and recorded in Book M. of Deeds on page 178.

19 (*e*) That afterwards at the said term of district court within and for Knox county, Nebraska, held in the month of November 1891, by reason of the northeast quarter of section 27, twp. 31, range 3 west of the 6th P. M. having legal assessments remaining unpaid and having delinquent taxes sold as by law required and purchasers by the said Farmers Loan and Trust Company and having neglected to pay the same or any part thereof, and tax deed having been issued therefor to the Farmers Loan and Trust Company it the Farmers Loan and Trust Company, recovered a judgment against the north-east quarter of section 27, twp. 31, north, range 3 west of the 6th P. M. and Henry A. Root for the sum of $77.47 and costs of suit taxed at $23.83 and $7.75 attorneys' fees, and a de-

cree of foreclosure therein against said premises and a default having been made in the payment of said decree, under the order of said court, the premises were duly and legally sold as upon execu-
tions as by law required; at public auction to the highest and best bidder therefor, which was this answering defendant, and who paid the amount of said bid, to-wit: $490.00 to the said sheriff; that at the April term of said district court for the year 1892 the said proceedings were duly examined by the court and the same being in all respects regular, and this answering defendant being the equitable owner of said premises to the amount of said sum of money the sheriff of Knox county, Nebraska, was ordered to convey said premises in fee simple to this answering defendant, which he afterwards did on the 16th day of May 1892; that ever since said date this answering defendant has been and still is the legal and equitable owner of said premises; and that immediately after receiving this deed, this answering — acquired peaceably, *upon* exclusive, adverse and notorious possession of said premises and commenced to make lasting and valuable improvements thereon and *have* made
valuable improvements thereon to the amount of $1440.
20 13. That in each of several proceedings, the real owner of the land hereinbefore described and referred to in plaintiff's petition was unknown; that the land itself in each instance was made defendant in several said causes of action instituted in the said district court of Knox county, Nebraska, by the Farmers Loan and Trust Company; that service was made upon said land by publication in weekly newspapers published and in general circulation in said county as by law required; that the affidavits to obtain service by publication was made out and sworn to on the afternoon of the 28th of September, 1891, at Sioux City, Iowa, and it together with the petition was sent by mail to the clerk of the district court of Knox county, Nebraska, at Niobrara, which said affidavit accompanied said petition in said action, and in the ordinary course of mail and were filed on the 30th day of Sept. 1891 without any reasonable or unusual delay.

14. That at the time the Farmers Loan and Trust Company commenced its several series of actions against the several tracts of land described herein, it was then the legal owner and holder of said tax deeds against said several tracts of land issued to the said Farmers Loan and Trust Company according to law, and by the duly qualified and acting county treasurer of Knox county, Nebraska, and all right- acquired thereby under the said Farmers Loan and Trust Company, became and were merged into the right and title to each parcel and tract of land which this answering defendant purchased and which have been specifically described herein before; and all right, title, claim and interest and demand against said land growing out of tax liens, tax certificates, and tax deeds and all rights thereunder, which then existed at the commencement and during
the pendency of the said suits of the Farmers Loan and
21 Trust Company against said lands and Henry A. Root and
in favor of said Farmers Loan and Trust Company, were merged into this answering defendant and by reason of the pur-

chases aforesaid by this answering defendant, *was* transferred unto him and by reason thereof, this answering defendant is now the legal and equitable owner and entitled to immediate possession of said premises and every part thereof; and were purchased by the defendant without any notice, actual or constructive of plaintiff's claim of title or any claim of his pretended grantors or any of them.

15. Now on or about the — day of —— 1895, the said plaintiff Alvin Leigh without color or claim of title and while this defendant — many miles from said premises *form said premises*, to-wit: in Crawford county, Iowa, the said plaintiff with force and arms — trespass upon said premises and took and acquired possession thereof and still is holding adverse possession of said premises, and without any right or authority to occupy the said premises or any part thereof, and by reason thereof this answering defendant has been damaged in the sum of $2500.00

Wherefore, this answering defendant prays that the plaintiff's pretended cause of action be dismissed; that the title of said premises be quieted and confirmed in this answering defendant as against the said plaintiff and all persons claiming through or under him; that said plaintiff be adjudged to be unlawfully in possession of said premises; that plaintiff be adjudged and decreed to pay to this answering defendant the sum of $2500.00 as a reasonable rental for said premises; that this answering defendant have such other and further relief as may be just and equitable in the premises; that plaintiff be required to pay the costs of this action; that the defendant be allowed to go hence without day; and for such relief will your answering defendant and crosspetitioner ever pray.

22

H. S. GREEN,
By JAMES McCANE AND
WILLIS E. REED,
His Attorneys.

STATE OF NEBRASKA, } ss:
Knox County, }

H. S. Green of lawful age, being first duly sworn, deposes and says: That he is defendant in the above entitled cause that he knows the contents of the foregoing answer and cross-petition and that the facts and allegations therein contained are true as he verily believes.

H. S. GREEN.

Subscribed in my presence and sworn to before me this 18th, day of May 1896.

E. A. HOUSTON,
[SEAL.] *Notary Public.*

My commission expires October 15th, 1897.

And afterwards, to wit on the 18th day of May A. D. 1897 there was filed *of* said clerk a reply to amended answer and cross-petition in the words and figures following, to wit:

In the District Court of Knox County, Nebraska.

ALVIN LEIGH, Plaintiff,
vs.
H. S. GREEN, Whose Real and Christian Name is Unknown, Defendant.
} Reply to Amended Answer and Cross-petition.

1. The plaintiff for reply to the amended answer of the defendant says he denies each and every allegation of new matter therein contained.

2. Plaintiff for answer and reply to the cross-petition of the defendant says he denies each and every allegation there-in contained.

23 3. Plaintiff for answer to defendant's cross-petition says that the same does not state facts sufficient to constitute a cause of action in favor of the defendant and against the plaintiff.

Wherefore plaintiff prays judgment as in his amended petition prayed for.

ALVIN L. LEIGH,
By J. C. CRAWFORD,
His Attorney.

STATE OF NEBRASKA, }
County of Cuming, } *ss:*

J. C. Crawford being duly sworn deposes and says that he is attorney for plaintiff herein; that the facts set forth in the foregoing reply are within his personal knowledge and as he verily believes true.

J. C. CRAWFORD.

Subscribed and sworn to before me this 10th day of May 1897.
[SEAL.]
GEO. N. ADAM,
Notary Public.

And afterwards to-wit, on the 19th day of October, 1897 there was filed in the office of said clerk a journal entry in the words and figures following, to-wit:

In the District Court of Knox County, Nebraska.

ALVIN L. LEIGH, Plaintiff,
vs.
H. S. GREEN, Defendant.
} Journal Entry.

Now on this 19th day of October 1897, the same being a judicial day of the regular October, 1897, term of the district court holden within and for said county, this cause having been heretofore submitted to the court upon the pleadings and the evidence, came up for decision in open court. The plaintiff appearing by Hon.
24 James C. Crawford and the defendant appearing in person and by James McCabe and Willis E. Reed, his attorneys and the court having carefully examined the pleading and listened to

and considered the evidence, and being fully advised in the premises doth find for the plaintiff and against the defendant.

It is therefore ordered, adjudged and decreed that the cloud cast upon plaintiff's title to the following described real estate:

North-east quarter (N. E. ¼) of section twenty-seven (27) and the north-west quarter (N. W. ¼) of section twenty-seven (27) all in twp. thirty-one (31) north, range three (3) west of the 6th P. M. and north-west quarter (N. W. ¼) of section twenty-two (22) and the south-west quarter (S. W. ¼) of section twenty-two (22) and the south half (S. ½) of the south-west quarter (S. W. ¼) of section twenty-two (22) all in township thirty-one (31) north, range three (3) west of the 6th P. M.

By reason of certain decrees and sheriffs' deeds heretofore rendered and executed and recorded, in which The Farmers Loan and Trust Company was plaintiff and the land herein described and Henry A. Root were defendants, and sheriffs' deeds executed therefor showing title in the defendants H. S. Green, be and the same hereby is cancelled, and removed and set aside and held for naught, and the said above land is in no manner affected so far as the plaintiff herein is concerned, by reason of the said proceedings in which the Farmers Loan and Trust Company sought to foreclose certain tax liens against said property, to which decree and ruling the defendant excepts.

That the cross-bill of the defendant herein be and the same hereby is dismissed at the cost of the defendant to which ruling and judgment the defendant excepts.

Forty days from the rising of the court is allowed plaintiff to prepare and settle bill of exceptions.

25

—— ——, *Judge.*

O. K.

J. C. CRAWFORD,
Attorney for Plaintiff.

In the District Court of Knox County, Nebraska.

ALVIN L. LEIGH, Plaintiff,
vs.
H. S. GREEN, Whose Real Christian Name is Unknown, Defendant. } Decree.

Now on this day, to-wit: the 16th day of May 1895, this cause came on to be heard upon the petition and proofs offered therein and the defendant having failed to answer or otherwise plead to said petition was considered to be in default after having been three times called in open court. Whereupon on consideration of the allegations of the petition, and the evidence offered in said cause the court finds that at the commencement of this action, the plaintiff was in possession of the lands described in said petition, and had a legal estate therein and was entitled to the possession thereof. The court also finds that said defendant has no interest in said lands and is not entitled to the possession of the same.

It is therefore considered by the court that the title and possession of said plaintiff in the following described premises to-wit the west half of section twenty-two (22) and the south half of south-east quarter section twenty-two (22) and north half of section twenty-seven (27) all in township thirty-one (31) range (3) west of the 5th principal meridian and situated on Knox county, Nebraska, be and the same is hereby qui-ted and confirmed in the plaintiff: and said defendant and all persons claiming under him are hereby enjoined from claiming any interest in said premises adverse to that of the plaintiff or from interrupting his use and enjoyment thereof, and it is further ordered and adjudged that the plaintiff recover his costs taxed at $—.

JOHN S. ROBINSON, *Judge.*

26 ALVIN L. LEIGH
vs.
H. S. GREEN. } Case No. 1331. Journal Entry.

Now on this 19th day of May, 1896, this cause came on to be heard upon the motion and affidavits filed by the defendant to set aside the judgment and default heretofore entered in this cause and the court after hearing the affidavits read in behalf of the defendant and also the plaintiff does find that the defendant never had any notice other than by publication, and that he is entitled to have the judgment, and default heretofore entered in said cause, set aside, and be allowed to defend said action upon the payment of all costs. It is therefore considered ordered and adjudged by the court that the judgment, and default heretofore entered be, and the same is hereby set aside and that defendant pay all costs in said matter up to date to all of which plaintiff then and there objected which objections were overruled to which plaintiff excepted, the parties in open court waived a trial to a jury and agreed in open court to try said cause to the court.

Now this same day, this cause was by stipulation duly filed by said parties to be heard by the Hon. John S. Robinson, judge, at Norfolk, Nebraska, and the findings, judgment and decree is to be entered on the 6th day of October A. D. 1896.

ALVIN LEIGH, Plaintiff,
vs.
H. S. GREEN, Defendant. } Journal Entry.

Now on this 6th day of October 1896 a stipulation was filed by the parties agreeing that said cause should be heard by the Hon. John S. Robinson at Norfolk, Nebraska, on some date between the 4th day of November 1896 and the 14th day of November
27 1896 or at some other date that may be agreeable to all parties and the decision is to be handed down on the first day of the spring term of this court and the same is to be heard on the same terms and conditions in accordance with the stipulations filed at the last term of court.

10953

And afterwards to wit, on the 19th, day of May 1897 there was filed in the office of said clerk a journal entry in the words and figures following, to-wit.

In the District Court of Knox County, Nebraska.

ALVIN L. LEIGH
vs.
H. S. GREEN. } Case No. 1331. Journal Entry.

Now on this 19th, day of May 1897 the same being a judicial day of the regular May 1897 term of said court, this cause came on for hearing to the court upon the pleadings, plaintiffs petition, defendant's amended answer, plaintiff's reply and the evidence, and on the 19th day of May, the same being a regular judicial day of said court said cause came on for further hearing upon the pleadings and evidence.

Plaintiff appearing by J. C. Crawford and C. C. McNish his attorneys and defendant by James McCabe W. R. Green and Willis E. Reed his attorneys, and said cause was submitted to the court upon the evidence and pleadings. Plaintiff allowed 20 days to file brief, defendant 15 days thereafter, plaintiff 15 days thereafter to reply, said cause hereby taken under advisement for argument and examination till the next term of the district court.

If the parties can agree upon the time, if not to fix time for oral argument at cause at time and place agreeable to the court.

28 O. K.

W. E. REED,
Attorney for Defendants.

O. K.

J. C. CRAWFORD,
Attorney for Plaintiff.

ALVIN L. LEIGH
vs.
H. S. GREEN. } Judge's Notes.

May 14th, 1895 default May 16th. 1895 hearing to the court, finding and decree as prayed herein.

May 19th 1896 motion sustained and former decree set aside and defendant allowed to come in and defend upon condition that defendant at this time pay the costs of this action at this time stipulated that cause shall be heard at Norfolk, Nebraska on July 13th, 1896 at one p. m. decree to be entered as October 6th, 1896.

October 6th, 1896 past for trial as stipulation on file.

May 18th, 1897 parties appeared for trial, trial proceeded.

May 19th, 1897, trial concluded, taken under advisement plaintiff to file brief in twenty days, defendants to file brief fifteen days thereafter plaintiff to file reply brief, to be decided at October term.

October 19th, 1897, decree for plaintiff as prayed defendant excepts and forty days given from the rising of this court to settle bill of exceptions.

STATE OF NEBRASKA, } ss:
County of Knox, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above foregoing is a true copy of the original petition, amended answer reply to amended
29 answer, and journal entries, including the decree, judgment and findings of the court, as the same is shown by the records in my office. I further certify, that the original bill of exceptions was filed in my office on January 3rd, 1898, in the above case, and I further certify that the district court of Knox county, Nebraska, adjourned (*sine die*) November 26th, 1897.

Witness my hand and the seal of said court, this tenth day of January A. D. 1898.

[SEAL.]

R. H. HARRIS,
Clerk of the District Court.

Endorsed: 9838. Transcript in the supreme court of the State of Nebraska. Alvin L. Leigh, plaintiff, *vs.* H. S. Green, defendant, Doc. — page — No. — Supreme court of Nebraska Filed Jan. 17, 1898. D. A. Campbell, clerk. J. C. Crawford, attorney for plaintiff, Reed & McCabe, attorneys for defendant.

30 And on the same day there was filed in the office of the clerk of said supreme court a certain bill of exceptions in words and figures following to-wit:

ALVIN L. LEIGH
vs.
H. S. GREEN. } Bill of Exceptions.

THE STATE OF NEBRASKA, } ss:
Knox County, }

Filed this 3rd day of January, A. D. 1898.

R. H. HARRIS,
Cl'k Dist. Court.
—— ——, *Deputy.*

5—1331—310

In the District Court of Knox County, Nebraska.

ALVIN L. LEIGH, Plaintiff,
vs.
H. S. GREEN, Defendant. } Bill of Exceptions.

Before Hon. J. S. Robinson, judge.

Appearances.

For plaintiff J. C. Crawford & C. C. McNish.
For defendant Reed & Gross and James McCabe.

31 Submitted May 18, 1897. Trial to the court. Decree for plaintiff. Oct. 19, 1897.

Fees for making this bill of exceptions $23.00 paid by defendant

C. A. WILLIAMS,
Official Reporter.

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Be it remembered that on the trial of this cause in the district court of Knox county before Hon. J. S. Robinson, judge of said court, at the May 1897, term thereof, to wit, on the 18th day of May 1897, it was admitted by the parties to this action that prior to the 7th day of October, 1880, the title to the land in controversy was in Erwin Davis.

33 The plaintiff, to maintain the issue on his part offered in evidence Exhibit "1" being a complete transcript of proceed-

ings had in the district court of Knox county Nebraska, wherein Algernon S. Patrick was plaintiff and Erwin Davis was defendant, together with the petition and order for removal to the circuit court of the United States.

The defendant objected to the introduction of the petition contained in Exhibit "1" as immaterial, irrelevant and incompetent, which objection was over-ruled; to which the defendant excepted.

The defendant objected to the affidavit for an attachment contained in Exhibit "1" as incompetent, irrelevant and immaterial, which objection was over-ruled; to which the defendant excepted.

The defendant objected to the introduction of the order of attachment issued out of the district court of Dixon county, contained in Exhibit "1" as incompetent, irrelevant and immaterial, which objection was over-ruled; to which the defendant excepted.

The defendant objected to the introduction of the order of attachment issued out of the district court of Knox county, contained in Exhibit "1" as incompetent, irrelevant and immaterial, which objection was over-ruled to which the defendant excepted.

The defendant objected to the introduction of the answer contained in Exhibit "1" as incompetent, irrelevant and immaterial, which objection was over-ruled to which the defendant excepted.

The defendant objected to the petition for removal to U. S. court contained in Exhibit "1" as incompetent, irrelevant and im-
34 material which objection was over-ruled; to which the defendant excepted.

The defendant objected to the introduction of the bond on removal to the U. S. court contained in Exhibit "1" as incompetent, irrelevant and immaterial, which objection was overruled; to which the defendant excepted Exhibit "1" was received and read in evidence. A copy of all of Exhibit "1" is hereto attached, marked Exhibit "1" and made a part of this bill of exceptions.

The plaintiff, further to maintain the issue on his part, offered in evidence a certified copy of a judgment on the verdict returned at a session of the circuit court of the United States for the district of Nebraska, returned on the 21st day of January, 1890, marked Exhibit "2," to the introduction of which the defendant objected as incompetent, irrelevant and immaterial, which objection was overruled; to which the defendant excepted, and the said exhibit was received and read in evidence A copy of said exhibit is hereto attached, marked Exhibit "2" and made a part of this bill of exceptions.

The plaintiff, further to maintain the issue on his part offered in evidence Exhibit "3" to which the defendant objected as incompetent, irrelevant and immaterial which objection was over-ruled; to which the defendant excepted and the same was received and read in evidence. A copy of said exhibit is hereto attached marked Exhibit "3" and made a part of this bill of exceptions.

The plaintiff further to maintain the issue on his part, offered in evidence Exhibit "4" to which the defendant objected as in-
35 competent, irrelevant and immaterial, which objection *objection* was over-ruled to which the defendant excepted; and the

said exhibit was received and read in evidence. A copy of said exhibit is hereto attached, marked Exhibit "4" and made a part of this bill of exceptions.

The plaintiff, further to maintain the issue on his part, offered in evidence Exhibit "5" to which the defendant objected as incompetent, irrelevant and immaterial, which objection was over-ruled to which the defendant excepted; and the same was received and read in evidence. A copy of said exhibit is hereto attached marked Exhibit "5" and made a part oft his bill of exceptions.

It is admitted by the parties to this cause that Lionel C. Burr conveyed such interest in the lands in controversy as he had to J. C. Crawford and R. C. Peters, and that the latter two conveyed to the plaintiff in this action.

The plaintiff, further to maintain the issue on his part, offered in evidence the deed from Burr to Crawford and Peters marked Exhibit "6" to which the defendant objected as incompetent, irrelevant and immaterial, which objection was over-ruled; to which the defendant excepted; and the same was received and read in evidence. A copy of said deed is hereto attached, marked Exhibit "6" and made a part of this bill of exceptions.

The plaintiff, further to maintain the issue on his part, offered in evidence a certified copy of a deed from Crawford and Peters to the plaintiff, marked Exhibit "7" to which there was no objection and the same was received and read in evidence. A copy of said exhibit is hereto attached, marked Exhibit "7" and made a part of this bill of exceptions.

The plaintiff, further to maintain the issue on his part, offered in evidence Exhibit- "A," "B" and "C" and "D" and "E" to
36 which there was no objection and the same were received and read in evidence. A copy of said exhibits *are* hereto attached, marked as the originals respectively Exhibits "A," "B" and "C" and "D" and "E" and made a part of -his bill of exceptions.

The plaintiff, further to maintain the issue on his part, called J. B. BARNES, as a witness, who, being sworn as required by law, testified as follows:

Direct examination by J. C. CRAWFORD:

Q. Judge, were you acquainted with the case that was filed in this court by Algernon S. Patrick and Matthewson T. Patrick or either of them some time in 1877 or 1878?

A. I have a recollection of such a case while I was judge of the district sitting in court here at Niobrara and a motion of removal to the United States court was made.

Q. It is the same case we are talking about in this controversy?

A. Yes, sir. A motion for removal was argued before me.

Q. You are acquainted with Mr. Patrick?

Q. I have known him about twenty years.

Q. Where did they reside during that time?

A. In Omaha.

Q. Douglas county, Nebraska?
A. Yes, sir.
Q. Do you know whether Algernon S. Patrick and A. S. Patrick were one and the same person?
A. Yes, sir.
Q. You know whether Matthewson T. Patrick and M. T. Patrick were one and the same person?
A. Yes, sir; we always called the one Al. Patrick and the other Mat. Patrick.

Witness excused. The plaintiff thereupon rested.

37 Defendant's case.—The defendant, to maintain the issue on his part, called H. S. GREEN, as a witness who, being duly sworn as required by law, testified as follows:

Direct examination by W. E. REED:

Q. You may state your name and place of residence.
A. H. S. Green, Dow City, Crawford county, Iowa.
Q. How long have you been a resident of Crawford county, Iowa?
A. About thirteen or fourteen years.
Q. Do you know the plaintiff in this suit?
A. I am acquainted some—not with Mr. Leigh; no, I am not acquainted with Mr. Leigh.
Q. Do you know the property in controversy, that is described in plaintiff's petition and defendant's answer?
A. I certainly do.
Q. You may state if you have been upon the property within the last three years?
A. I have.
Q. What, if any, improvement have you made on that property?

To which the plaintiff objected as incompetent, and immaterial; that the property was in the custody of the law being under attachment, which objection was over-ruled; to which the plaintiff excepted.

A. I had all this land broken out. But some men from Iowa started some breaking there two or three times. I didn't do any breaking. I went out to see what they were doing. Then, I had some other fellows break some up for a partial use of the land, for a part of the years for putting in flax.
Q. What year was that?
A. That was—I am not sure whether—that was 1892, I think.
Q. Have you a way of ascertaining?
38 A. Only by my books. I think it was 1892.
Q. You may state whether you came into possession of that land in 1892?
A. I think I did.
Q. What was the condition of the land when you came into possession of it?
A. Prairie.

Q. All prairie?
A. All prairie.
Q. How much of the land in controversy did you have broke that year?

To which the plaintiff objected as incompetent and immaterial, and the property was in the custody of the law, being under attachment, which objection was overruled; to which the plaintiff excepted.

A. The whole 720 acres. Well, I will vary that as I don't think it was all broken that first year. I don't think it was all broken in 1892, but it was all broken in 1892 and 1893.
Q. Where is this land with reference to Bloomfield in this State and county?
A. Just about a mile and a half north of Bloomfield.
Q. Was there any other improvements made upon this land by you?
A. None whatever.
Q. What was the character of the soil?
A. It is very nice upland soil rather dark loam.
Q. And what of the land, whether it is rough?
A. I would say it lay very nice, because it could all be broken except a quarter of an acre in one place.
Q. You know how much it cost to have that broken out?
39 A. I paid two dollars an acre.
Q. Did you farm the land yourself in person or did you rent it?
A. I rented the land out.

It is admitted by the parties to this cause that the plaintiff has had possession of the land in controversy for the crop years of 1895 and 1896.

Q. Do you know what the fair rental value of the premises in controversy or premises similarly situated to Bloomfield during the years 1895 and 1896?

To which the plaintiff objected as incompetent and immaterial, which objection was over-ruled, to which the plaintiff excepted.

A. Which year? I think I do.
Q. What was it?

To which the plaintiff objected as incompetent and immaterial, which objection was over-ruled; to which the plaintiff excepted.

A. I would consider it two dollars an acre. The reason why I would consider it worth that was that the last years what land I rented for cash rent, I rented for two dollars an acre of this same land.

The plaintiff moved to strike out the last part of the answer as not responsive, which objection was sustained; to which the defendant excepted.

Witness excused.

The defendant, further to maintain the issue on his part, called J. G. SUTTON, as a witness, who, being sworn as required by law, testified as follows:

Direct examination by W. E. REED:

Q. You may state your name, age, and place of residence.
40 A. J. G. Sutton, Knox county, Nebraska.
Q. How long have you resided at Bloomfield?
A. Six years last November.
Q. Do you know the property in controversy, being the north-east quarter and north-west quarter of section twenty-seven; the south-west quarter, the north-west quarter, south half of the south-east quarter of section twenty-two, township thirty-one north, range three west of the sixth principal meridian? Do you know that property?
A. Yes, sir.
Q. Ho- long have you known it?
A. About six years.
Q. Do you know whether that property is all under cultivation?
A. Yes, sir.
Q. How far is it from Bloomfield?
A. About two miles.
Q. What business are you engaged in?
A. Real estate.
Q. How long engage- there?
A. About six years.
Q. Have you, as a real estate dealer, had occasion to rent any farms and know the fair rental value of farms in that vicinity?
A. Yes; a little farther out; not in that vicinity—all around there.
Q. I mean in that vicinity?
A. Yes.
Q. Do you know what the fair rental value was of premises similar to that I have described and in that vicinity and in that condition rent for during the years 1895 and 1896?
A. Yes, sir.
Q. What was it?

To which the plaintiff objected as incompetent, irrelevant and immaterial, which objection was over-ruled; to which the plaintiff excepted.

41 A. From a dollar and a half to two dollars an acre.

Cross-examination by J. C. CRAWFORD:

Q. Mr. Sutton, what kind of improvements are on the land in dispute at that time?
A. Nothing but the breaking.
Q. You mean to say that you could rent land in that vicinity from a dollar and a half or two dollars an acre cash rent with only breaking on it, without any other improvements?

A. Yes, sir.

Q. Will you name some person that leased land and paid cash at that price in that particular locality?

To which the defendant objected as incompetent and immaterial which objection was overruled; to which the defendant excepted.

A. I don't recollect any one just now. I know that Mr. Gilman's land rents at about that rate; most all of his land. He rents prairie land five years and they break it out—average about a dollar and a half an acre.

Q. How long ago did he make the lease?

A. He made the leases—makes them every year.

Q. So he made them every year and made them for five years?

A. No; I said he was making leases every year; that is about his usual rental value.

Q. You mean to say that you can lease land in that vicinity at the present time for five years at even a dollar an acre?

A. Yes, sir.

Q. Who will lease land at that price?

To which the defendant objected as immaterial. No ruling.

A. I will.

Witness excused.

42 The defendant further to maintain the issue on his part, called S. SAUNDERS, as a witness, who, being sworn as required by law, testified as follows:

Direct examination by W. E. REED:

Q. You may state your name, age, and place of residence.

A. S. Saunders; thirty-two years old; residence Bloomfield, Nebraska.

Q. How long have you resided at Bloomfield?

A. Six or seven years.

Q. How large a place is Bloomfield?

A. Seven or eight hundred, I suppose.

Q. Is there a railroad running into that town?

A. There is.

Q. How long has that been running in there?

A. It was built in there six years ago last fall.

Q. Do you know the property described here—the property in controversy?

A. I do.

Q. Do you know the lay of the land?

A. I do.

Q. Describe it to the court.

A. It is rolling land, very fine land, good soil, lays nice.

Q. Nice farm land is it?

A. All good farm land yes.

Q. What business are you engaged in?
A. The banking business.
Q. Do you do any renting of farm property in that vicinity?
A. Yes, some.
Q. Do you know what the usual rental value of property is that vicinity?
A. I think so; there is very little land rented there for cash re at the present time.
43 Q. Do you know what the fair rental value of this land controversy with such improvements as it had was duri the year- 1895 and 1896?

To which the plaintiff objected as incompetent and immateri which objection was over-ruled; to which the plaintiff excepted.

A. I think so.
Q. You may state how much per acre it was.

To which the plaintiff objected as incompetent and immateri which objection was over-ruled; to which the plaintiff excepted.

A. I should say about a dollar and a half an acre.

Cross-examination by J. C. CRAWFORD:

Q. Mr. Saunders, could you rent that class of land with no oth improvements thereon except breaking in 1895 and 1896 for ca and get money for it?

To which the defendant objected as incompetent, irrelevant a immaterial, which objection was over-ruled to which the defenda excepted.

A. I think so; I think the crop would have paid a dollar and half an acre.
Q. What I mean is this; isn't it a fact that you can only get promise of a dollar and a half an acre and that you can't rent a and get the money at that price?
A. I think so; always the same as anything else if you have poor renter, a man that will beat you out of your pay you lose it. have rented hundred of acres of land and occasionally missed i rent. Sometimes get it. I have rented Gilman's land for a goo while and rent them and make leases every year — raw prairie f a dollar and a quarter an acre for each year for five years.
44 Q. You cannot do that to-day, can you?
A. Yes, sir; I can.

Witness excused.

The defendant, further to maintain the issue on his part, offere in evidence Exhibit "8" being the sheriff's deed in case 846, bein sheriff's deed to the north-east quarter of section twenty-seven, tow ship thirty-one north, range three west, under the date of the 16t day of May, 1892, to which the plaintiff objected as incompeten irrelevant and immaterial and for the further reason that the cou

that rendered the decree under which said sale was made was without jurisdiction over the defendant or the subject matter of the suit; for the further reason that the property named in the instrument offered was held under attachment in an action pending in the United States court of the district of Nebraska, which objection was over-ruled to which the plaintiff excepted; and said exhibit was received and read in evidence to the court. A copy of said exhibit is hereto attached, marked Exhibit "8" and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offeren in evidence the certified copy of the petition in chancery being part of Exhibit "9" to which the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree under which said sale was made was without jurisdiction over the defendant or the subject matter of the suit; for the further reason that the property named in the instrument offered was held under attachment in an action pending in the
45 United States court of the district of Nebraska, which objection was over-ruled; to which said plaintiff excepted: and said certified copy of the petition in chancery was received and read in evidence to the court. The defendant further to maintain the issue on his part offered in evidence a certified copy of an affidavit for publication of notice, being part of Exhibit "9," to which the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree under which said sale was made was without jurisdiction over the defendant or the subject matter of the suit; for the further reason that the property named in the instrument offered was held under attachment in an action pending in the United States court of the district of Nebraska, which objection was over-ruled; to which the plaintiff excepted: and the same was received and read in evidence to the court.

The defendant further to maintain the issue on his part, offered in evidence a certified copy of the copy of appraisement, being part of Exhibit "9" to which the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree under which said sale was made was without jurisdiction over the defendant or the subject matter of the suit; for the further reason that the property named in the instrument offered was held under attachment in an action pending in the United States court of the district of Nebraska, which objection was over-ruled to which the plaintiff excepted: and the same was received and read in evidence to the court.

The defendant, further to maintain the issue on his part, offered in evidence a certified copy of the cerrificate of the county clerk, being part of Exhibit "9," to which the plaintiff objected as
46 incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree — which said sale was made was without jurisdiction over the defendant or the subject matter of the suit; for the further reason that the property named in the instrument offered was held under attachment in

an action pending in the United States court of the district of Nebraska, which objection was over-ruled; to which the plaintiff excepted; and the same was received and read in evidence to the court.

The defendant, further to maintain the issue on his part, offered in evidence the certified copy of the certificate of the county treasurer, being part of Exhibit "9" to which the plaintiff objected as incompetent, irrelevant and immaterial and for the further reason that the court that rendered the decree under which said sale was made was without jurisdiction over the defendant or the subject matter of the suit; for the further reason that the property named in the instrument offered was held under attachment in an action pending in the United States court of the district of Nebraska, which objection was overruled, to which the plaintiff excepted; and the same was received and read in evidence to the court.

The defendant, further to maintain the issue on his part, offered in evidence a certified copy of the certificates of the clerk of the district court, being part of Exhibit "9" to which the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree under which said sale was made was without jurisdiction over the defendant or the subject matter of the suit for the further reason that the property named in the instrument offered was held under attachment in an
47 action pending in the United States court of the district of Nebraska, which objection was over-ruled; to which the plaintiff excepted; and the same was received and read in evidence to the court.

The defendant, further to maintain the issue on his part, offered in evidence a certified copy of a legal notice, being part of Exhibit "9" to which the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree under which said sale was made was without jurisdiction over the defendant or the subject matter of the suit; for the further reason that the property named in the instrument offered was held under attachment in an action pending in the United States court of the district of Nebraska, which objection was over-ruled; to which the plaintiff excepted; and the same was received and read in evidence to the court.

Said Exhibit "9" is hereto attached, marked Exhibit "9" and made a part of this bill of exceptions.

It is stipulated that hereafter until further indicated in this record, the objection of incompetency when made, to evidence offered, shall not go to the authentication of testimony and this agreement shall apply to testimony already offered by either party hereto.

The defendant, further to maintain the issue on his part, offered in evidence page 130 of Journal "4" of the records of the clerk of the district court of Knox county, Nebraska, the said portion so offered being court journal setting forth the decree and order of the district court of this county purporting to be a decree, order and judgment of foreclosure made by the district court of Knox county in the said cause heretofore referred to on the tenth day of Novem-

ber, 1891, and also from the said journal of said court on page 149 of Book Three the order and judgment of said court purport-
48 ing to confirm the said sale made under this decree and order of foreclosure of the said north-east quarter of section twenty-seven.

It is agreed by the parties to this cause that identification of the journal of the clerk of the district court shall be and hereby is waived by the parties to this cause.

The plaintiff objected to the above offer of the journal as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree under which said sale was made was without jurisdiction over the defendant or the subject matter of the suit; and for the further reason that the property named in the said decree was held under attachment in an action pending in the United States court of the district of Nebraska; and for further reason that the court entering the decree had no jurisdiction, that the decree is void, which objection was over-ruled; to which the plaintiff excepted and the same was received and read in evidence to the court. A copy of said decree as found on page 130 of Journal "4" is hereto attached, marked Exhibit "F," and made a part of this bill of exceptions; and a copy of the confirmation as found on page 149 of Journal "3" is hereto attached, marked Exhibit "G" and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered in evidence Exhibit "H" to which the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree under which said order of sale was issued was without jurisdiction over the defendant or the subject matter of the suit; and for the further reason that the property named in the said order of sale was held under attachment in an action pending in the United States court of the district of
49 Nebraska, and that the decree is void, which objection was over-ruled; to which the plaintiff excepted; and the same was received and read in evidence to the court. Said exhibit is hereto attache-, marked Exhibit "H," and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered in evidence a certified copy of the sheriff's notice of sale, marked Exhibit "I," to which the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree in said case was without jurisdiction over the defendant or the subject matter of the suit; and for the further reason that the property named in said notice was held under attachment in an action pending in the United States court of the district of Nebraska, and that the decree is void, which objection was over-ruled; to which the plaintiff excepted: and the same was received and read in evidence to the court. Said exhibit is hereto attached marked Exhibit "I," and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered in evidence a certified copy of the return of the sheriff to the order of sale, marked Exhibit "J" to which the plaintiff objected as in-

competent, irrelevant and immaterial, and for the further reason that the court that rendered the decree in said case was without jurisdiction over the defendant or the subject matter of the suit; and for the further reason that the property named in said instrument was held under attachment in an action pending in the United States court of the district of Nebraska, and that the decree is void, which objection was over-ruled; to which the plaintiff excepted and the same was received and read in evidence to the
50 court. Said exhibit is hereto attached, marked Exhibit "J" and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered in evidence deed, marked Exhibit "10" *to which the plaintiff* objected as incompetent, irrelevant and immaterial and for the further reason that the court that rendered the decree under which said sale was made was without jurisdiction over the defendant or the subject matter of the suit; and for the further reason that the property named in said instrument was held under attachment in an action pending in the United States court of the district of Nebraska, which objection was over-ruled to which the plaintiff excepted; and the same was received and read in evidence. A copy of said exhibit is hereto attached, marked Exhibit "10" and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered in evidence a certified copy of a petition in chancery, marked Exhibit "11," to which the plaintiff objected as incompetent, irrelevant and immaterial and for the further reason that the court that rendered the decree in said case was without jurisdiction over the defendant or the subject matter of the suit; and for the further reason that the property named in said instrument was held under attachment in an action pending in the United States court of the district of Nebraska, which objection was over-ruled; to which the plaintiff excepted; and the same was received and read in evidence to the court. Said exhibit is hereto attached, marked Exhibit "11," and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered in evidence a certified copy of the notice, marked Exhibit,
51 "13" to which the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree in said case was without jurisdiction over the defendant or over the subject matter of the suit; and for the further reason that the property named in said instrument was held under attachment in an action pending in the United States court of the district of Nebraska which objection was over-ruled; to which the plaintiff excepted and the same was received and read in evidence to the court. Said exhibit is hereto attached, marked Exhibit "13" and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered in evidence Exhibit "14," to which the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree in said case was without jurisdiction over the defendant or over the subject matter of the suit; and

for the further reason that the property named in said instrument was held under attachment in an action pending in the United States court of the district of Nebraska, which objection was overruled; to which the plaintiff excepted: and the same was received and read in evidence to the court. Said exhibit is hereto attached marked Exhibit "14" and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered in evidence Exhibit "12," being proceedings in the case of The Farmers Loan & Trust Company *vs.* Henry A. Root and the N. W. ¼ of section 27, township 31, range 3 west, case No. 843, of the district court of Knox county, to which the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree in said case was without jurisdiction over the defendant or over the subject matter of the action; and for the further reason, that the property named in said instrument was held under attachment in an action pending in the United States
52 court of the district of Nebraska, which objection was overruled; to which the plaintiff excepted: and the same was received and read in evidence to the court Said exhibit is hereto attached, marked Exhibit "12," and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part offered in evidence page 127 of Book 4 of the journal and record of the district court of Knox county, Nebraska, purporting to be the judgment and decree of foreclosure entered by said court at the November term, 1891, in the said case last above referred to: and the defendant also offered in evidence page 149 of Book 3 of the journal and record of the said district court of said court confirming and establishing the sale made under the judgment and decree of foreclosure last above referred to to which offers the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree in said case was without jurisdiction over the defendant or over the subject matter of the action; and for the further reason that the property named therein was held under attachment in an action pending in the United States court, of the district of Nebraska, which objection was overruled to which the plaintiff excepted: and said pages as offered were received and read in evidence. A copy of said decree page 127 of Book 4 is hereto attached, marked Exhibit "K," and made a part of this bill of exceptions. And a copy of page 149 of Book 3 is hereto attached, marked Exhibit "L," and made a part of this bill of exceptions.

The defendant, to maintain the issue on his part, offered in evidence Exhibit "15," being the sheriff's deed to the northwest quarter of section 22 township 31, range 3 west, case No.
53 809, date of deed, 14th day of May, 1892, to which the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree upon which said deed was issued, was without jurisdiction over the defendant or over the subject of the suit; and for the further reason that the property named in said instrument was held under attach-

ment in an action pending in the United States court of the district of Nebraska which objection was over-ruled; to which the plaintiff excepted: and said exhibit was received and read in evidence to the court. A copy of said deed is hereto attached, marked Exhibit "15," and made a part of this bill of exceptions.

The defendant further to maintain the issue on his part offered in evidence Exhibit "16," to which the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree in said case, was without jurisdiction over the defendant or the subject matter of the suit; and for the further reason that the property named in the said petition was held under attachment in the United States court of the district of Nebraska, in an action therein pending, which objection was over-ruled: to which the plaintiff excepted: and said exhibit was received and read in evidence to the court. Said exhibit is hereto attached, marked Exhibit "16," and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered in evidence a certified copy of an affidavit, marked Exhibit "17" to which the plaintiff objected as incompetent irrelevant and immaterial, and for the further reason that the court that rendered
54 the decree in said action was without jurisdiction of the defendant or over the subject matter of the suit; and for the further reason that the property named in said action was held under attachment in an action pending in the United States court of the district of Nebraska, which objection was over-ruled; to which the plaintiff excepted; and the said exhibit was received and read in evidence to the court. Said exhibit is hereto attached, marked Exhibit "17," and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part offered in evidence a certified copy of a legal notice, and other papers marked Exhibit "18," to which the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree in said case was without jurisdiction over the subject matter of the suit, and over the defendant; and for the further reason that the property therein described was held under attachment in an action pending in the United States court of the district of Nebraska, which objection was over-ruled; to which the plaintiff excepted and said exhibit was received and read in evidence to the court Said exhibit is hereto attached, marked Exhibit "18," and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered in evidence Exhibit "19," to which the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree in said action had no jurisdiction over the defendant or the subject matter of the suit; and for the further reason that the property therein described was held under attachment in an action pending in the United States court
55 of the district of Nebraska, which objection was over-ruled; to which the plaintiff excepted, and the same was received and read in evidence. Said exhibit is hereto attached, marked Ex-

hibit "19," and made a part of this bill of exceptions. The defendant, further to maintain the issue on his part offered in evidence page 93 of Book 4 of the journal of the district court of Knox county, Nebraska, purportin- to be the judgment and decree of foreclosure entered in said court in the said case of Farmers Loan & Trust Company against Henry A. Root and the N. W. ¼ of section 22, township 31, Tange 3 west, being case No. 809; and defendant also offers in evidence page 149 of Book 3 of the journal of the said district court of Knox county, Nebraska, purporting to be the judgment and order of confirmation of the sale made of the said land last referred to under the said judgment and decree above mentioned, to which offers the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the decree in said case was without jurisdiction of the court rendering it over the defendant or the subject matter of the suit; and for the further reason that the property therein described was held under attachment in an action pending in the United States court of the district of Nebraska, which objection was over-ruled; to which the plaintiff excepted; and the said exhibit was received and read in evidence to the court. A copy of said decree page 93 of Book 4 is hereto attached, marked Exhibit "M," and made a part of this bill of exceptions: and a copy of order of confirmation page 149 in Book 3 is hereto attached, marked Exhibit "N" and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part offered in evidence sheriff's deed, marked Exhibit "20" being a deed of the south-west quarter of section 22 township 31 range 3 west, to which the plaintiff objected as incompetent, irrelevant
56 and immaterial and for the further reason that the court that rendered the decree in said case was without jurisdiction over the defendant or the subject matter of the suit; and for the further reason that the property described in said instrument was held under attachment in an action pending in the United States court of the district of Nebraska, which objection was over-ruled; to which the plaintiff excepted; and the same was received and read in evidence. A copy of said exhibit is hereto attached, marked Exhibit "20" and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered in evidence a certified copy of a petition in chancery in the case of Farmers Loan & Trust Company *vs.* Henry A. Root and the S. W. ¼ of sec. 22, twp., 31, range 3 W., in case No. 833, marked Exhibit "21," to which the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree in said case was without jurisdiction over the defendant or the subject of the suit; and for the further reason that the property therein described was held under attachment in an action pending in the United States court of the district of Nebraska, which objections was over-ruled; to which the plaintiff excepted; and said exhibit was received and read in evidence to the court. Said exhibit is hereto attached, marked Exhibit "21," and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered

in evidence a certified copy of an affidavit for publication in said case No. 833, marked Exhibit "22," to which the plaintiff ob-
57 jected as incompetent, irrelevant and immaterial, for the further reason that the court that rendered the decree in said case was without jurisdiction over the defendant or the subject matter of the suit; and for the further reason that the property described therein was held under attachment in an action pending in th- United States court of the district of Nebraska, which objection was over-ruled; to which the plaintiff excepted; and the same was received and read in evidence to the court. Said exhibit is hereto attached, marked Exhibit "22," and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered in evidence a certified copy of notice and proof thereof in case No. 833, being marked Exhibit "23," to which the plaintiff objected as incompetent, irr-levant and immaterial and for the further reason that the court that rendered the decree in said case was without jurisdiction over the defendant or the subject of the suit; and for the further reason that the property described therein was held under attachment in an action pending in the United States court of the district of Nebraska, which objection was over-ruled; to which the plaintiff excepted; and the said exhibit was received and read in evidence to the court. Said exhibit is hereto attached, marked Exhibit "23" and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered in evidence Exhibit "24," *be* a certified copy of order of sale, appraisement, return, certificates of liens and sheriff's sale in said case, to which the plaintiff objected as incompetent, irr-levant and immaterial, and for the further reason that the court that rendered the decree in said case was without jurisdiction over the defendant or the subject matter of the suit; and for the further reason that
58 the property described therein was held under attachment in an action pending in the United States court of the district of Nebraska, which objection was over-ruled; to which the plaintiff excepted; and the same was received and read in evidence to the court. Said exhibit is hereto attached, marked Exhibit "24" and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part offered in evidence a certified copy of notice of sale and proof thereof, marked Exhibit "24½," to which the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree in said case was without jurisdiction over the defendant or the subject matter of the suit; and for the further reason that the property described therein was held under attachment in an action pending in the United States court of the district of Nebraska, which objection was over-ruled to which the plaintiff excepted and the said exhibit was received and read in evidence. Said exhibit is hereto attached, marked Exhibit "24½," and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered in evidence page 117 of Book 4 of the journal of the district court of

Knox county, Nebraska, purporting to be the judgment and decree of foreclosure entered in said court in the case of The Farmers Loan & Trust Company *vs.* Henry A. Root and the S. W. ¼ of sec. 22, township 31, range 3 west being case No. 833; and defendant also offers in evidence page 149 of Book 3 of the journal of the said district court of Knox county, Nebraska, purporting to be the judgment and order of confirmation of the sale made of the said land last referred to under the said judgment and decree above mentioned,
59 to which offers the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree in said case was without jurisdiction over the defendant or the subject of the suit; and for the further reason that the property therein described was held under attachment in an action pending in the United States court of the district *court of the district* of Nebraska, which objection was over-ruled; to which the plaintiff excepted; and the said pages of the journal were received and read in evidence. A copy of the decree on page 117 of Book 4 is hereto attached, marked Exhibit "O," and made a part of this bill of exceptions. And a copy of said page 149 of Book 3 of the journal is hereto attached, marked Exhibit "P," and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered in evidence sheriff's deed, marked Exhibit "25," to which the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree in the said case was without jurisdiction over the subject of the suit; and for the further reason that the property named in the instrument was held under attachment in an action pending in the United States court of the district of Nebraska, which objection was over-ruled; to which the plaintiff excepted and said exhibit was received and read in evidence to the court. A copy of said exhibit is hereto attached, marked Exhibit "25," and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered in evidence a certified copy of a petition in chancery marked Exhibit "26," to which the plaintiff objected as incompetent, ir-
60 relevant and immaterial, and for the further reason that the court that rendered the decree in said action was without jurisdiction over the defendant or the subject of the suit; and for the further reason that the property named in said instrument was held under attachment in an action pending in the United States court of the district of Nebraska, which objection was over-ruled; to which the plaintiff excepted; and the said exhibit was received and read in evidence to the court. Said exhibit is hereto attached, marked Exhibit "26," and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered in evidence a certified copy of an affidavit for publication in the case of The Farmers Loan & Trust Company *vs.* Henry A. Root and the S. ½ of the S. E. ¼ of section 22, tp. 31, range 3 W., in case No. 825, marked Exhibit "27" to which the plaintiff objected as incompetent, irrelevant and immaterial and for the further reason that the court that rendered the decree in said case was without jurisdiction over the

defendant or the subject of the suit, and for the further reason that the property described in said instrument was held under attachment in an action pending in the United States court of the district of Nebraska, which objection was over-ruled; to which the plaintiff excepted, and said exhibit was received and read in evidence to the court. Said exhibit is hereto attached, marked Exhibit "27," and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered in evidence a certified copy of the affidavit of publication in said case No. 825, marked Exhibit "28" to which the plaintiff objected as incompetent, irrelevant and immaterial, and for the further
61 reason that the court that rendered the decree in said case was without jurisdiction over the defendant or the subject of the suit; and for the further reason that the property described therein was held under attachment in and action pending in the United States court of the district of Nebraska, which objection was over-ruled; to which the plaintiff excepted and the said exhibit was received and read in evidence. Said exhibit is hereto attached, marked Exhibit "28," and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered in evidence certified copies of the appraisal, order of sale, sheriff's return thereon, and certificates of liens therein obtained and used in said case No. 825, the bunch being marked Exhibit "29" to which the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree in said case was without jurisdiction over the defendant or the subject of the suit; and for the further reason that the property therein described was held under attachment in an action pending in the United States court of the district of Nebraska, which objection was over-ruled; to which the plaintiff excepted; and the said exhibit was received and read in evidence to the court. Said exhibit is hereto attached, marked Exhibit "29," and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered in evidence a certified copy of the notice and proof thereof in said case, marked Exhibit "30," to which the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree in said case was without jurisdiction over the defendant or the subject of the suit; and for the
62 further reason that the property therein described was held under attachment in an action pending in the United States court of the district of Nebraska, which objection was over-ruled; to which the plaintiff excepted; and the said exhibit was received and read in evidence to the court; said exhibit is hereto attached marked Exhibit "30," and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part, offered in evidence page 109 of Book 4 of the journal of the district court of Knox county, Nebraska, purporting to be the judgment and decree of foreclosure entered in said court in the case of The Farmers Loan & Trust Co. *vs.* Henry A. Root and the S. ½ of the S. E. ¼ of sec. 22 tp. 31, range 3 W., being case No. 825; and the defendant

also offers in evidence page 149 of Book 3 of the journal of the said district court of Knox county, Nebraska, purporting to be the judgment and order of confirmation of the sale made of the said land last above referred to under the said judgment and decree above mentioned, to which offers the plaintiff objected as incompetent, irrelevant and immaterial, and for the further reason that the court that rendered the decree in said case was without jurisdiction over the defendant or the subject of the action; and for the further reason that the property described therein was held under attachment in an action pending in the United States court of the district of Nebraska, which objection was over-ruled; to which the plaintiff excepted; and said pages offered were received and read in evidence to the court. A copy of said pag- 109 of Book 4 is hereto attached marked Exhibit "Q," and made a part of this bill of exceptions. And a copy of page 149 of Book 3 is hereto attached, marked Exhibit "R" and made a part of this bill of exceptions.

The defendant, further to maintain the issue on his part.

63 offered in evidence Exhibit "31," being a certified copy of a petition in eqyity in the district court of Knox county, Nebraska, in which Henry A. Root was plaintiff and Algernon S. Patrick and M. T. Patrick and David Armstrong were defendants, together with a certified copy of all the proceedings had thereafter, pertaining to said case, to which the plaintiff objected as incompetent, irrelevant and immaterial and for the further reason that defendants in that case were residents — the State of Nebraska, and the whole proceedings are void for that reason; and for the further reason that the property described in said proceedings was held under attachment in an action pending in the United States court of the district of Nebraska which objection was over-ruled; to which the plaintiff excepted; and the said exhibit was received and read in evidence to the court. Said exhibit is hereto attached, marked Exhibit "31," and made a part of this bill of exceptions.

It is agreed between the parties to this action that from the date of the suing out of the attachment in the case of Patrick against Davis in the Knox county district court until the time the land was broken out by the defendant H. S. Green, the land in controversy was wild and unoccupied land.

The defendant, further to maintain the issue on his part, recalled.

H. S. GREEN, as a witness, who testified as follows:

Direct examination by W. E. REED:

Q. During the years 1892, 1893 and 1894 did you collect any rents and profits from the land in controversy?

To which the plaintiff objected as incompetent, irrelevant and immaterial, which objection was over-ruled; to which the plaintiff excepted.

Q. How was the land farmed with reference to their being an occupant actually residing upon the land; was there anyone there anyone residing on the land?

64 A. The tenant didn't reside on the land, but resided in the neighborhood and farmed the land and paid the rents to me.

Q. Did you rent this land in 1895?

A. I rented for the year of 1895; that is, I had rented part of the land when I was interfered with by the other claimants to the land.

Q. Do you know whether the tenant to whom you rented the land and to whom you y-elded possession of the land for the year 1895 whether or not that tenant paid rent to the plaintiff or acknowledged the plaintiff as his landlord instead of yourself?

To which the plaintiff objected as incompetent, irrelevant and immaterial which objection was over-ruled to which the plaintiff excepted.

A. I cannot tell whether he paid any rent to the plaintiff; I am quite sure that he still occupied and farmed part of the premises.

Q. You may state whether or not you paid the taxes upon the land in controversy after you obtained title to it from the sheriff until you ceased to obtain and hold possession of the land?

A. I did.

Q. Do you remember how much you paid?

A. No I couldn't tell the exact amount.

Q. Can you find out how much you paid?

A. Yes; but not without going to may books.

Q. You may ascertain the amount of taxes that you paid and give it to the reporter.

It is agreed between the parties to this suit that from the time that the attachment proceedings were instituted by Algernon
65 S. Patrick against Erwin Davis down to the time that the Farmers Loan & Trust Company paid the taxes and upon which they afterwards sued to foreclose their liens and certificates, there *was* no taxes paid.

The defendant, further to maintain the action on his part, offered in evidence Exhibit "32," being abstract of title of the several tracts in controversy in this action, it being agreed that this abstract correctly shows what appears of record in this county with reference to the title of the said land in controversy herein, to which there was no objection and the same was received and read in evidence to the court. Said exhibit is hereto attached, marked Exhibit "32," and made a part of this bill of exceptions.

It is agreed that on the 28th day of December, 1882, there was filed in the office of the county clerk of Knox county Nebraska, the deed heretofore referred to from Erwin Davis to Henry A. Root, a true copy of which is contained in Exhibit*ed* "31" and that there have been no transfers of record in Knox county, Nebraska, of the premises in controversy made by Henry A. Root since said date.

The defendant thereupon rested.

Written across the face thereof: Offer withdrawn by defendants and Exhibit 32 not offered nor attached as evidence.

Rebuttal.

The plaintiff, further to maintain the issue on his part, offered in evidence Exhibit "33," the deposition of J. N. H. Patrick, with the stipulation therein attached, to which there was no objection, and the same was received and read in evidence to the court. A copy of said deposition is hereto attached marked Exhibit "33," and made a part of this bill of exceptions.

66 It is agreed that the deposition of James M. Woolworth, marked Exhibit "34" taken in the case of James C. Crawford against George W. Stacks in the district court of this county may be treated and regarded as though taken and filed in this case.

The plaintiff, further to maintain the issue on his part, offered in evidence Exhibit "34," to which there was no objection, and the same was received and read in evidence to the court. A copy of said exhibit is hereto attached, marked Exhibit "34," and made a part of this bill of exceptions.

The plaintiff, further to maintain the issue on his part, offered in evidence Exhibit "35," a certified copy of the decree of the district court of Douglas county, Nebraska, in an action where Algernon S. Patrick was plaintiff and Erwin Davis, Henry A. Root and J. N. H. Patrick and James M. Woolworth were defendants, to which the defendant objected as incompetent, irrelevant and immaterial, and for the further reason that it is not supported by evidence showing the pleadings in the case nor the representation if any of the defendants or any of them, nor the kind of process by which the defendants or any of them were brought in court; and further for the more specific objection that it appears affirmatively on the record offered that the court was without jurisdiction of the subject matter, which objection was over-ruled; *in* which the defendant excepted; and the same was received and read in evidence to the court.

A copy of said exhibit is hereto attached marked Exhibit "35" and made a part of this bill of exceptions.

67 It is agreed by the parties to this suit that the rents and profits of the land in controversy in 1895 and 1896 were worth $1.50 per acre for each year on the amount proven to have been under cultivation.

The plaintiff thereupon rested.

EXHIBIT "1."

District Court of Knox County.

ALGERNON S. PATRICK, Plaintiff,
v.
ERWIN DAVIS, Defendant. } Petition.

The said Algernon S. Patrick, plaintiff, complains of the said Erwin Davis defendant and says:

1. That on the 7th day of February, A. D. 1877, the said plaintiff recorded a judge- in the district court of the third judicial district

of the Territory of Utah for the county of Salt Lake against the Lost Charm Silver Mining Company of Utah, Limited, a corporation then existing and doing business under and by virtue of the laws of the Territory of Utah for the sum of $8806.92 and costs taxed at $— that on the same day to-wit on the 7th day of February A. D. 1877 one George Collens recovered a judgment in the same court and against the same company for the sum of $2599.90 and costs taxed at $— which had preference of the said judgment of the said plaintiff that upon the judgement last mentioned *for* the said Cullens caused an execution to be issued and a levy to be made thereunder upon the mine of the said company and that afterwards the said mine was sold upon said execution and that thereby the purchaser acquired the title to said mine subject however to the right of said plaintiff to redeem the same from said sale at any time within six months of the date of said sale according to the laws of said Territory of Utah in such cases made and provided. That after said sale and before the expiration of six months limited by law for the redemption of the said mine from said sale so made, he the said plaintiff did redeem the said mine from
68 said sale made by the said Collens under the said execution and paid in order to effect the said redemption the sum of $2,677.90, which he was required under the said laws to do. That thereafter, to-wit, on or about the 10th day of September A. D. 1877 the said def't having or claim*ed* to have a lien on the said mine and other property of the said Lost Chance Silver Mining Company and being desirous to redeem said mine from the said plaintiff, as such redemption as aforesaid agreed with the said plaintiff that in consideration that he the said plaintiff would permit the said defendant to redeem said mine as aforesaid he, the said defendant would pay to the said plaintiff the amount which he the said plaintiff had paid as redemption money for the said mine from the sale so made under the execution in favor of the said Cullens as aforesaid with interest and also agreed that the first proceeds realized from the property and mine of the said Lost Chance Silver Mining Company by him, the said defendant should be applied upon the said judgment so obtained by the said plaintiff against the said company and before any of said proceeds were applied upon the said lien and claims of the said defendant. That thereupon in consideration of the said premises and agreement of the said defendant and not otherwise the said plaintiff consented and permitted the redemption by the said defendant from the said plaintiff of the said mine from the said sale so made under the Cullen's judgment as aforesaid and executed an acknowledgement to that effect whereby the said defendant was afterwards enabled t- and did acquire title to the said mine, and has since disposed of the same and had realized large proceeds therefrom yet the said defendant did not at the time of said transaction nor has he since, nor at any other time, though often requested paid to the said plaintiff the sum so agreed
69 to be paid for said redemption money or any part thereof neither has the said defendant paid or applied any portion of the proceeds realized by him from the property and mines of the

said Last Chance Silver Mining Company as aforesaid, upon the said judgment by the said plaintiff against said company as aforesaid but utterly refuses to do so to the damage of the said plaintiff $2,677.90 with interest thereon from Sept. 3rd 1877 and also $8,806.92 with int. from Feb. 7, 1877.

2. The said plaintiff for a second cause of action against the said defendant says:

That on or about the 15th day of November A. D. 1873 the said plaintiff was employed by the said defendant to transport silver ore from the Flagstaff mine in Utah Territory to the furnaces at Sandy in said Territory for a certain hire and reward then agreed upon between said parties. That the said plaintiff continued in said employment until on or about the 20th day of November A. D. 1875 at which said date the account between said parties for and on account of said services — *unsettled* and stated upon the books of the said defendant and there was then found to be due to the said plaintiff thereon the sum of $26539.54.

That no payments have been made thereon, and the plaintiff avers that there is still due and owing from the said defendant to the said plaintiff upon the said stated account the said sum of $26539.54.

The plaintiff also says that at all times hereinbefore mentioned said defendant was sued and still continues to be a non-resident of the State of Nebraska and absent therefrom with the exception of a few days when passing through the State on journeying to and from New York and Utah Territory, and that the aggregate of all the times when the said defendant has been in this State within the last five years would not exceed ninety days.

Wherefore said plaintiff prays judgment against the said defendant for the said sum of $2677.90 with interest from the 3rd day of September A. D. 1877 also for $8806.92 with interest from the 7th day of Feb. 1877 and also for $26539.54 with interest from the 20th day of November 1875 and costs.

GEO. W. DOANE,
Att'y for Pl't'ff.

District Court of Knox County.

ALGERNON S. PATRICK
v.
ERWIN DAVIS. } Attachment.

STATE OF NEBRASKA, *Douglas County,* } *ss:*

Mathewson T. Patrick being sworn says that he is the agent of the plaintiff above named Algernon A. Patrick, that the said plaintiff is now absent from said county and State. Affiant also says that the claims upon which the action of the said plaintiff herein is founded are as follows, to-wit:

1st. That the said plaintiff having recovered a judgment on the 7th day of February, 1877, in the district court of the third judicial district of the Territory of Utah against the Last Chance Silver

Mining Company of Utah Limited" for the sum of $8806.92 and costs, which judgment became a lien on the property of the said company and one George Cullins having recovered a judgment against the same company on the same day and in the same court for the sum of $2599.90 and costs, which
71 judgment had preference over the said judgment of the plaintiff, and the said Cullens having caused an execution to be issued, and a levy to be made thereunder upon the mine of the said company which was afterwards sold under said execution, whereby the purchaser acquired title to the said mine subject however to the right of the said plaintiff to redeem the same from said sale at any time within six months after the date of said sale according to the laws of said Territory of Utah, and the said plaintiff having redeemed the said mine from said sale before the expiration of the time limited by law for that purpose as aforesaid to effect which he paid the sum of $2677.90 the said defendant afterwards to-wit; on or about the 10th day of September 1877, having or claiming to have a lien on said mine, and other property of the Last Chance Silver Mining Company and being desirous to redeem said mine from said plaintiff did undertake and agree to pay to said plaintiff the amount which he the said plaintiff had paid as redemption money for said mine with interest and also agreed that the first proceeds realized by the said defendant from the property and mine of the said "Last Chance Silver Mining Company" should be applied upon the said judgment so obtained by the said plaintiff against said company before any of said proceeds were applied upon the lien and claim of said defendant that thereupon in consideration of said premises and agreements of said defendant and not otherwise the said plaintiff consented to and permitted the redemption by the said defendant from the said plaintiff of the said mine from the said sale so made under the Cullens judgment as aforesaid and executed an acknowledgement to that effect, whereby the said defendant was after-
72 wards enabled to and did acquire title to said mine and has since disposed of the same, and has realized large proceeds therefrom, yet the said defendant has not at any time paid to the said plaintiff the sum so agreed to be paid for said redemption money or any part thereof neither has he paid or applied any portion of the proceeds realized by him from the property and mines of the said Last Chance Silver Mining Company as aforesaid upon the said judgment of the said plaintiff against said company but has hitherto refused so to do.

2nd cause of action. That on or about the 15th day of November A. D. 1873 the said plaintiff was employed by the said defendant to transport silver ore from the "Flagstaff mine" in Utah Territory to the furnace at Sandy in said Territory for a certain hire and reward then agreed upon therefor between said parties—that said plaintiff continued in said employment until on or about the 20th day of November 1875, at which time the account between said parties for and on account of said services was settled and stated upon the books of the said defendant and there was found to be due to the said plaintiff there on the sum of $26539.54—that no payments have

been made thereon. Affiant also says that said claims are just and that said plaintiff ought, as affiant believes, to recover thereon the sum of $2677.90 with interest thereon from September 3, 1877, and the further sum of $8806.92 with interest thereon from February 7, 1877, and also the further sum of $26539.54 with interest thereon from November 20, 1875.

Affiant also says that the said defendant is a non-resident of said State of Nebraska, and further says not.

M. T. PATRICK.

Sworn to and subscribed before me this 20th, day of November A. D. 1880.

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W. H. S. HUGHES,
Notary Public.

[NOTARIAL SEAL.]

Endorsed on the back: A. S. Patrick *v.* Erwin Davis. Affidavit for attachment. Filed Nov. 24, 1880. Vac. Randa, clerk D. C.

Order of Attachment.

STATE OF NEBRASKA, } ss:
Dixon County, }

In the District Court of said County of Dixon.

ALGERNON S. PATRICK, Plaintiff, }
vs.
ERWIN DAVIS, Defendant. }

The State of Nebraska to the sheriff of Knox county:

You are hereby commanded to attach and safely keep the lands tenements, goods chattels, stocks, or interest in stocks, rights credits, monies, and effects of the above named defendant in your county not exempt by law from being applied to the payment of the above named plaintiff's claim for thirty-eight thousand and twenty-four and $\frac{36}{100}$ dollars and fifty dollars the probable costs of this action.

You will make due return of this order on the 27th day of September A. D. 1880.

Witness my signature and the seal of said court at Ponca this seventh day of September A. D. 1880.

F. M. BISBEE,
Clerk of said Court.

[SEAL.]

Return.

I hereby certify that this is a true copy of the original order of attachment received by me on the 18th day of September A. D. 1880 and also that by said original order of attachment I did on the 25th day of September A. D. 1880 attach thereunto the following

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described property as the property of the said defendant Erwin Davis, to-wit: The north $\frac{1}{2}$ of section 4 in township 31, and the north $\frac{1}{2}$ of the north east $\frac{1}{4}$ and the east $\frac{1}{2}$ of the south

east ¼ of section 9, and the south west ¼ of section 25 in township 31, north of range 3 west, also the east ½ of section 34 in township 30, north of range 2 west, also the south ½ of the south east ¼ of section 2 and the north ½ of the north west ¼ and the sourth west ¼ of the south west ¼ of section 11, and the north east ¼ of section 13, and the south west ¼ of section 15 all in township 31, north of range 2 west; also the south east ¼ of section 30, and the west ½ of the sourth west ¼ of section 30, and the south west ¼ of section 35, all in township 30 north of range 2 west; also the north ½ and the south west ¼ of section 19, and the north west ¼ of section 20, and the west ½ of section 18, and the north east ¼ of section 31 all in township 31, north of range 3 west; also the south east ½ of section 5 and the south west ¼ of section 4 and the north east ¼ of section 2 and the north east ¼ of the south west ¼ and the west ½ of the south west ¼, and the north west ¼ of the sourth east ¼ of section 2, and the north ½ of the south east ¼ of section 3, all in township 29 north of range 3 west; also the south ½ of section 15 and the north west ¼ of section 22, and the north ½ of the south west ¼ and the north ½ of the north east ¼ of section 22, all in township 31, north of range 3 west; also the east ½ of section 8, in township 30 and the south ½ of section 9 in township 30 all north of range 2 west; also the west ½ of the north west ¼ and the west ½ of the south west ¼ of section 33, and all of section 32 in township 31, north of range 2 west,
75 also the north west ¼ of section 7 in township 29, north of range 3 west; also the south ½ of section 32 in township 30 north of range 3 west; also the west ½ of section 29, and the south ½ of section 31, and the south ½ of the south west ¼ and the south ½ of the south east ¼ of section 22, and the north ½ of section 27, and the south west ¼, and the north east ¼ of section 20, and the west ½, and the south east ¼ of section 17, all in township 31, north of range 3 west also the north ½ of the north west ¼ and the north east ¼ of section 4, and the north ½ of the north west ¼ of section 8 and the north east ¼ of section 12, and the north east ¼ and the south west ¼ of section 6, all in township 29, north of range 3 west; also the east ½ of the south west ¼ and the west ½ of the south east ¼ of section 9, in township 31 north of range 3 west; all situated in Knox county, Nebraska.

B. ARMSTRONG, *Sheriff*,
By J. P. REED, *Deputy*.

Endorsed on the back as follows: District court Dixon county. Algernon S. Patrick, *vs.* Erwin Davis. Order of attachment. Geo. W. Doane, plaintiff's attorney. Returned and filed Sept. 27, 1880. Vac. Randa clerk D. C

Received September 18, 1880.

D. ARMSTRONG, *Sheriff*,
By J. P. REED, *Dept.*

We Davis Armstrong sheriff of said county of Knox, and George W. Bly and R. C. Matthews two residents of said county the said George W. Bly and R. C. Matthews being first duly sworn do truly inventory and appraise the following property of Erwin Davis on an order of attachment issued in a suit of the said Al-
76 gernon S. Patrick against the said Erwin Davis now pending in the district court of the sixth judicial district in and for Knox county, Nebraska, to wit: The north ½ of section 4, township 31, north of range 3 west, at 2 & 50/100 dollars. The north ½ of the north east ¼ at 2.50 dollars and the east ½ of the south east ¼ at 2 & 50/100 dollars, both in section 9; and the south west ¼ of section 25 at two dollars, all in township 31, north of range 3 west of the sixth principal meridian And the east ½ of section 34, township 30, north of range 2 west at three dollars, the south ½ of the south west ¼ of section 2 at two dollars, and the north ½ of the north west ¼ of section 11 at two and 50/100 dollars. And the south west ¼ of section 11 at two and 50/100 dollars, and the north east ¼ of section 13 at two dollars, and the south east ¼ of section 15, at three dollars, all in township 31 north of range 2 west. The south east ¼ of section 30 at two and 50/100 — and the north west ¼ of section 35 at two and 50/100 dollars, all in township 30 north of range 2 west; the north ½ of section 19 at two dollars, and the south west ¼ of sec. 19 at two dollars, and the north west ¼ of section 20 at two and 50/100 dollars, and the west ½ of section 18 at three dollars, and the north east ¼ of section 31 at two and 50/100 dollars all in township 31 north of range 3 west; the south east ¼ of section 5 at two dollars, and the south west ¼ of section 4 at two dollars, and the north east ¼ of section 2 at two dollars and the north east ¼ of the south west ¼ of section 2 at two dollars, and the west ½ of the south west ¼ of section 2 at two and 50/100 dollars, and the north west ¼ of the south east ¼ of section 2 at two and 50/100 dollars, and the north ½ of the south east ¼ of section 3 at two and 50/100 dollars,
77 all in township 29, north of range 3 west; the south ½ of section 15 at three dollars, and the north west ¼ of section 22 at two and 50/100 dollars; the north ½ of the south west ¼ at two and 50/100 dollars, and the north ½ of the north east ¼ at two and 50/100 dollars, both of section 22, all in township 31 north of range 3 west; the east ½ of section 8 in township 30 north of range 2 west at two and 50/100 dollars. The west ½ of the north west ¼ at two dollars, and the west ½ of the south west ¼ at two dollars, both of section 33 township 31 north of range 2 west. The south west ¼ of section 9, township 30 north of range 2 west at two and 50/100 dollars, section 32 township 31 north of range 2 west at two and 50/100 dollars, The north west ¼ of section 7 township 29 north of range 3 west at two and 50/100 dollars. The south ½ of section 32, township 30 north of range 3 west, at two and 50/100 dollars. The west ½ of section 29 at two dollars, and the south ½ of section 31 at two dollars, both in township 31 north of range 3 west. The south ½ of the south west ¼ at two and 50/100 dollars and the south ½ of the south east ¼ at two and 50/100 dollars both of section 22, and the north ½ of section 27, at three dollars; and the south west ¼ at

two and 50/100 dollars and the north east ¼ at two and 50/100 dollars both of section 20, and the north west ¼ at two and 50/100 dollars and the south west ¼ at two dollars and the south east ¼ at two dollars. All of section 17 township 31, north of three west. The north ½ of the north west ¼ of section 4 at two and 50/100 dollars and the north east ¼ of section 4 at two and 50/100 dollars, and the north ½ of the north west ¼ of section 8 at two dollars, and the north east ¼ of section 12 at two and 50/100 dollars and the north east ¼ of section 6 at two and 50/100 dollars, and the south — ¼ of section 6
78 at two and 50/100 dollars, all in township 29 north of range 3 west. The east ½ of the south-west ¼ at two and 50/100 dollars, and the west ½ of the south east ¼ at two dollars, both of section 9 of township 31, north of range 3 west of the sixth principal meridian; making in the aggregate the sum of $21680.00.

Given under our hands this 6th day of December A. D. 1880.

D. ARMSTRONG, *Sheriff*,
By J. P. REED, *Deputy*.
GEO. W. BLY.
R. C. MATTHEWS.

Endorsed on back as follows: Algernon S. Patrick *vs.* Erwin Davis. Appraisement, Filed December 6, 1880. Vac Randa, clerk D. C.

Order of Attachment.

STATE OF NEBRASKA, *Knox County*, } ss:

ALGERNON S. PATRICK, Plaintiff,
vs.
ERWIN DAVIS, Defendant.

The State of Nebraska to the sheriff of said county:

You are hereby commanded to attach and safely keep the lands tenements, goods chattels stocks, or interest in stocks, rights, credits, moneys and effects of the above named defendant in your county, not exempt by law from being applied to the payment of the above named plaintiff's claim or so much thereof as will satisfy the said plaintiff's claim for thirty eight thousand and twenty four and 36/100 ($38024.36) — and interest — dollars and fifty dollars the probable costs of this action.

You will make *do* return of this order on the 6th day of December A. D. 1880.

Witness my signature and the seal of said court at Niobrara, this 24th day of November A. D. 1880.

[Knox County, Dist. Court Seal.]

VAC RANDA,
Clerk of said Court.

79 Endorsed on back as follows:
District court, Knox county, Algernon S. Patrick *vs.* Erwin Davis. Order of attachment. George W. Doane and Park Good-

win, plaintiff's attorneys. Returned and filed December 6th 1880. Vac Randa, clerk. Received November 25th 1880. D. Armstrong, sheriff by J. P. Reed, deputy.

Received this 25th day of November, 1880. I did not serve the copy as the defendant is a non-resident and now absent from the county.

D. ARMSTRONG, *Sheriff*,
By J. P. REED, *Deputy*.

According to the command of the within order of attachment I did the 1st. day of December A. D. 1880 attached in the presence of George D. Bly and R. C. Matthews two residents of said county the following lands and tenements to-wit: The north ½ of section 4 township 31 north of range 3 west, and the north ½ of the north east ¼ and the east ½ of the south east ¼ of the south east ¼ of section nine and the south west ¼ of section tw-nty five in township thirty one north, all of range three west of the 6th principal meridian, and the east ½ of section thirty four in township thirty north of range two west; and the south ½ of the south west ¼ of section two, and the north ½ of the north west ¼ of section eleven and the south west ¼ of the south west ¼ of section eleven, and the north east ¼ of section 13 and the south west ¼ of section fifteen in township thirty one north of range two west, and the south east ¼ of section thirty, and the west ½ of the south west ¼ of section thirty, and the north west ¼ of section thirty five, in township thirty north all of range two west; and the north ½ of section nineteen and the south west ¼ of section nineteen, and the north west ¼ of
80 section twenty, and the west ½ of section eighteen and the north east ¼ of section thirty-one in township thirty-one north of range three west; and the south-east ¼ of section five, and the south-west ¼ of section four, and the north-east ¼ of section two, and the north-east ¼ of the south-west ¼ of and the west ½ of the south-west ¼ of section two, and the north-west quarter of the south-east quarter of section two, and the north half of the south-east quarter of section three, in township twenty-nine north of range three west, and the south half of section fifteen, and the north-west quarter of section twenty-two, and the north half of the south-west quarter, and the north half of the north-east quarter of section twenty-two, in township thirty-one north of range three west, and the east half of section eight in township thirty, north of range two west, and the west half of the north-west quarter, and the west half of the south-west quarter, of section thirty-three, in township thirty-one north of range two west, and the south half of section nine, in township thirty north of range two west, all of section thirty-two in township thirty-one north of range two west, and the north west quarter of section seven in township twenty nine, north of range three west, and the south half of section thirty-two, in township thirty, north of range three west, and the west half of section twenty-nine, and the south half of section thirty-one, in township thirty-one, north of range three west, and the south half of the

south-west quarter, and the south half of the southeast quarter of section twenty-two, and the north half of section twenty-seven and the south west quarter and the north-east quarter of section twenty, and the north-west quarter and the south west quarter, and the south-east quarter of section seventeen, all in township thirty-one north of range three west, and the north half of the north-west quarter of section four, and the north-east quarter of section four,
81 and the north half of the north-west quarter of section eight, and the north east quarter of section twelve, and the north east quarter and the south west quarter, of section six, in township twenty nine north of range three west, and the east half of the south west quarter, and the west half of the south east quarter, in section nine, in township thirty one, north of range three west all situated in Knox county, Nebraska, and in connection with the said George W. Bly, and R. C. Matthews having first duly sworn George W. Bly and R. C. Mathews made the inventory and valuation thereat in writing which is herewith returned, and finding no occupant on said premises I left posted up in a conspicuous place thereon certified copies of this order.

D. ARMSTRONG, *Sheriff*,
By J. P. REED, *Deputy*.

Fees service	.50
Mileage 80 miles	4.00
Calling appraisers	.50
Appraisers' fees	4.00
Mileage	1.50
Total	10.50

Endorsed on back as follows: Algernon S. Patrick *vs.* Erwin Davis. Return of sheriff to order of attachment. Filed Dec. 6th, 1880. Vac Randa, clerk D. C.

STATE OF NEBRASKA:

In the District Court for Knox County.

ALGERNON S. PATRICK, Plaintiff,
vs.
ERWIN DAVIS, Defendant.

1st. Now comes the defendant in the above entitled action and for answer to the petition therein denies the said petition, and each and every allegation thereof except as hereinafter specifically admitted, defendant admits that he never applied or paid any money realized by him from the Last Chance silver mine or otherwise upon any judgment of plaintiff against the Last Chance Silver Mining
82 Company, and admits that he is and during all the times mentioned in the petition has been a resident of the State of New York.

2nd. And for the further and second defense to the causes of action set up in the petition the defendant says that said causes of action were barred by the laws of the State of New York before the commencement of this action.

J. C. COWIN AND
GEORGE F. PRITCHETT,
Def't's Att'ys.

STATE OF NEBRASKA, } ss:
Douglas County, }

George F. Pritchett being duly sworn says he is one of the attorneys for the defendant in the within entitled action, and that he believes the facts stated in the within answer to be true, that the said defendant is a non-resident of, and now absent from the State of Nebraska, which is the reason why this verification is not made by him.

GEO. F. PRITCHETT.

Subscribed in my presence and sworn to before me this 12th day of April A. D. 1882.

[NOTARIAL SEAL.] M. D. HYDE,
Notary Public in and for Douglas County, Nebraska.

Endorsed on back as follows:
District court of Knox county. Algernon S. Patrick *vs.* Erwin Davis. Answer J. C. Cowin and Geo. F. Pritchett, def't's att'ys. Filed April 13, 1882. Vac. Randa cl'k, by C. L. Boon, deputy.

STATE OF NEBRASKA:

In the District Court of Knox County.

ALGERNON S. PATRICK, Plaintiff, *vs.* ERWIN DAVIS, Defendant.	Petition for the Removal to the Circuit Court of the United States for the District of Nebraska.

To said district court:

83 Your petitioner, Erwin Davis the defendant in the above entitled action respectfully shows to this honorable court that the matter and amount in dispute in the above entitled suit exceeds exclusive of costs the sum of five hundred dollars. The controversy in said suit is between citizens of different State- and the petitioner Erwin Davis was at the time of the commencement of this action and still is a citizen of the State of New York and that the plaintiff Algernon S. Patrick was then and still is a citizen of the State of Nebraska.

And your petitioner offers herewith a bond with good and sufficient surety for his entering in said circuit court of the United States on the first day of its next session a copy of the record in this suit and for paying all costs that may be awarded by said circuit court

if said circuit court shall hold this suit was wrongfully or improperly removed thereto.

And he prays this honorable court to proceed no further herein except to make the order of removal required by law and to accept the said surety and bond and to cause the record herein to be removed into said circuit court of the United States in and for the district of Nebraska and he will ever pray &c.

J. C. COWEN &
GEO. F. PRITCHETT,
Att'ys for Petitioner.

STATE OF NEBRASKA, } ss:
Douglas County, }

I, George F. Pritchett having been duly sworn do say that I am one of the attorneys for the petitioner in the within entitled cause; that I have read the foregoing petition and know the contents thereof and that the statements and allegations therein contained are true as I verily believe.

GEO. F. PRITCHETT.

84 Subscribed in my presence and sworn to before me this 12th day of April, 1882.

[NOTARIAL SEAL.] M. D. HYDE,
Notary Public in and for Douglas County, Nebraska.

(Endorsed on back as follows:)
District court, Knox county. Algernon S. Patrick *vs.* Erwin Davis. Petition for removal to U. S. circuit court. Filed April 18–1882. Vac Randa cl'k. By C. L. Boon, dept.

Know all men by these presents: That I, Erwin Davis as principal and George L. Miller as surety are held and firmly bound unto Algernon S. Patrick in the penal sum of five hundred dollars — the payment thereof will and truly to be made unto the said Algernon S. Patrick his heirs and assigns we bind ourselves our heirs, representatives and assigns *and* jointly and severally firmly by these presents; yet upon these conditions: the said Erwin Davis having petitioned the district court of Knox county, State of Nebraska for the removal of a certain cause therein pending wherein Algernon S. Patrick is plaintiff and said Erwin Davis is defendant to the circuit court of the United States in and for the district of Nebraska.

Now, if said Erwin Davis the said petitioner shall enter in said circuit court of the United States the first day of the next session a copy of the record in said suit and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto then this obligation to — void otherwise in full force and virtue.

Witness our hands this 14th, day of April, 1882.

ERWIN DAVIS,
By GEO. F. PRITCHETT, *His Att'y.*
GEORGE L. MILLER.

STATE OF NEBRASKA, } ss:
Douglas County, }

85 George L. Miller being duly sworn says he resides in said county and is the owner of real property in said county *and is the owner of real property in said county* of the value of more than five thousand dollars over and above his debts and liabilities and property exempt from execution.

GEORGE L. MILLER.

Subscribed in my presence and sworn to before me this 14th day of April, 1882.

M. D. HYDE,
Notary Public in and for Douglas County, Nebraska.

Endorsed on back as follows:
District court, Knox county. Algernon S. Patrick vs. Erwin Davis. Bond on removal to United States court. Filed April 18th 1882. Vac Randa cl'k. By C. L. Boon, deputy.

STATE OF NEBRASKA, } ss:
County of Douglas, }

H. T. Patrick being first duly sworn says that he is the agent of the plaintiff Algernon S. Patrick above named, that the facts stated in the above petition are true as the affiant believes and that the said plaintiff is now absent from Douglas county and State of Nebraska.

H. T. PATRICK.

Subscribed in my presence and sworn to before me this 20th day of November, 1880.

[NOTARIAL SEAL.] W. H. S. HUGHES,
Notary Public.

(On the back:) Copy No. — A. S. Patrick, v. Erwin Davis. Petition. Filed Nov. 24–1880. Vac Randa, clerk, D. C.

EXHIBIT "2."

86 (Endorsed on the back:) No. 283 doc. G. United States circuit court district of Nebraska. Algernon S. Patrick vs. Erwon Davis. Copy of order of court.

STATE OF NEBRASKA, } ss:
Knox County, }

Received for record this 21 day of July A. D. 1894, at 9 o'clock and — minutes a. m. and recorded in Book 5 page 130 record.

CHAS. VAN CAMP, *Clerk.*
PHIL. B. CLARK, *Deputy.*

(On the face.)

At a session of the circuit court of the United States for the district of Nebraska, continued and held pursuant to adjournment at the United States court room, in the city of Lincoln, on the 21st day of Jauuary 1890, the Honorable Elmer S. Dundy, judge, being present and presiding in said court, the following among other proceedings were had and done to-wit:

ALGERNON S. PATRICK vs. ERWIN DAVIS. } 283, G. Judgment on Verdict.

The jury in this action having on the 18th day of January, 1890 rendered a verdict for the plaintiff and against the defendant and assessed the plaintiff's damages at the sum of sixty-five thousand dollars ($65,000.00) on motion of said plaintiff by John L. Webster, his attorney, it is considered ordered and adjudged by the court that the plaintiff is entitled to judgment on said verdict and that said plaintiff, Algernon S. Patrick, have and recover of and from said defendant Erwin Davis the sum of sixty-five thousand dollars together with $383.60 costs herein expended and that execution issue therefor.

It is further ordered that this judgment shall not prejudice the right of defendant to move the court for a new trial herein.

THE UNITED STATES OF AMERICA, *District of Nebraska,* } ss:

87 I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, do hereby certify that the above and foregoing is a true copy of an order entered upon the journal of the proceedings of said court, in the cause therein entitled; that I have compared the same with the original entry of said order and it is a true transcript therefrom and of the whole thereof.

Witness my official signature, and the seal of said court, at Omaha, in said district, this 12th day of July A. D. 1894.

[SEAL.] ELMER D. FRANK, *Clerk.*

EXHIBIT "3."

Endorsed on the back: Copy No. 283 doc. "G." United States circuit court district of Nebraska. Algernon S. Patrick, *vs.* Erwin Davis. Copy of order of court.

STATE OF NEBRASKA, *Knox County,* } ss:

Received for record this 12 day of Sept. A. D. 1894 at 9 o'clock and — minutes a. m. and recorded in Book 5 page 215, record.

CHAS. VAN CAMP, *Clerk.*

On the face.

At a session of the circuit court of the United States for the district of Nebraska, continued and held pursuant to adjournment, at the United States court room, in the city of Omaha on the ninth day of July, 1892, the Honorable Elmer S. Dundy judge, being present and presiding in said court, the following among other proceedings were had and done to-wit:

ALGERNON S. PATRICK, Plaintiff,
vs.
ERWIN DAVIS, Defendant. } 283, "G."

88 This matter coming on to be heard on the motion of Erwin Davis and James M. Woolworth and J. N. H. Patrick, sureties, in the supersedeas bond praying an order of court compelling the plaintiff to proceed to sell the attached property or to release the same from the lien of the attachment, it is ordered; at the request of the plaintiff, that an order of sale issue to the marshall of this court directing a sale of the attached property; and it is further ordered that execution be awarded on the mandate handed down from the supreme court in this cause and filed herein March 28, 1892.

THE UNITED STATES OF AMERICA,
District of Nebraska, } *ss:*

I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, do hereby certify that the above and foregoing is a true copy of an order entered upon the journal of the proceedings of said court, in the cause therein entitled, that I have compared the same with the original entry of said order and it is a true transcript therefrom, and of the whole thereof.

Witness my official signature and the seal of said court, at Omaha in said district this tenth day of September A. D. 1894.

[SEAL.] ELMER D. FRANK, *Clerk.*

EXHIBIT "4."

Endorsed on the back: Copy. No. 283 doc. "G." United States circuit court district of Nebraska. Algernon S. Patrick *vs.* Erwin Davis. Copy of order of court.

STATE OF NEBRASKA,
Knox County, } *ss:*

89 Received for record this 12 day of Sept. A. D. 1894 at 9 o'clock a. m. and recorded in Book 5 page 214 record.

CHAS. VAN CAMP, *Clerk.*

On the face.

At a session of the circuit court of the United States for the district of Nebraska, continued and held pursuant to adjournment at the

United States court room in the city of Omaha, on the 19th, day of May 1894, the Honorable Elmer S. Dundy judge, being present and presiding in said court, the following among other proceedings were had and done, to-wit;

ALGERNON S. PATRICK
vs.
ERWIN DAVIS. } 283, "G." Confirmation of Sale.

A rule having been heretofore entered in this action requiring said defendant to show cause by Saturday morning May 19th, 1894, why the sale of all the property and real estate sold by the U. S. marshall under the order of sale herein should not be confirmed and deeds therefor issued to the purchasers at said sale, and now on this 19th day of May, 1894, no cause having been shown and no objection filed against the same, and the said defendant being called three times in open court and still making default on motion of the plaintiff by his attorney, and on producing the return of sale of said attached property under the orders of the court made in this action, and the court on careful examination of the proceedings of said marshall in and about said sale, *and* being satisfied that the same has been had in all respects in conformity to law, and the orders and practice of this court, it is ordered that the said proceedings and sale be and they are hereby approved and confirmed.

90 It is further ordered that said Frank E. White, U. S. marshal for the district of Nebraska, convey, execute and deliver to the purchasers of said premises by deed in fee simple to the lands and tenements so sold and a writ of pos-ession is awarded to put the said purchasers in possession of said premises and the whole thereof.

THE UNITED STATES OF AMERICA,
District of Nebraska, } *ss:*

I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, do hereby certify, that the above and foregoing is a true copy of an order entered upon the journal of the proceedings of said court, in the cause therein entitled; that I have compared the same with the original entry of said order and it is a true transcript therefrom, and of the whole thereof.

Witness my official signature, and the seal of said court, at Omaha in said district, this tenth day of September A. D. 1894.

[SEAL.] ELMER D. FRANK, *Clerk.*

EXHIBIT "5."

This indenture made this 19th day of May one thousand eight hundred and ninety-four between Frank E. White, marshall of the United States for the district of Nebraska, party of the first part, and Lionel C. Burr of the city of Lincoln in the State of Nebraska party of the second part.

Whereas in a certain action pending in the circuit court of the United States for the district of Nebraska, in which Algernon S. Patrick is

plaintiff and Erwin Davis is defendant on the 21st. day of January 1890, the said Algernon S. Patrick recovered a judgment against the said Erwin Davis for sixty-five thousand ($65,000.) dollars' damages and $383.60 costs and the said court ordered that the certain lands taken upon a writ of attachment issued in said action, should be sold for the satisfaction of said judgment, and whereas an order of sale was accordingly issued out of said court in said action, commanding Brad S. Slaughter at that time marshal of the United States for said district to sell said lands for the satisfaction of said judgment upon which order he sold the said attached lands, but afterwards the said sale was set aside by said court, and afterwards and on the — day of April 1894, the said plaintiff sued out of said court an alias order of sale directed to the party of the first part commanding him to sell the said lands for the satisfaction of said judgment, and afterwards and on the 15th day of May 1894 the said party of the first party upon due proceedings in that behalf, offered said lands for sale as required by the said order and the statute in such case made and provided, and the said party of the second part bid for said lands, the sum of thirty thousand ($30,000.00) dollars and he being the highest and best bidder and being the highest and best sum bid for said lands, the said party of the first part struck the same off and sold the same to the said party of the second part and thereupon the said party of the first part returned the said order of sale into said court with his said proceedings endorsed thereon, and the said court duly confirmed said sale and ordered the said party of the first part to make this deed.

91

Now therefore, in consideration of the premises and the said sum of thirty thousand ($30,000.00) dollars by the said party of the second part paid to the said party of the first part, the receipt whereof is hereby acknowledged, the said party of the first part as marshall aforesaid, hereby grants, bargains, sells, conveys and confirms unto the said party of the second part, his heirs and assigns, all those certain lands hereinbefore referred to, known and described as follows, that is to say:

92

The wouth west quarter of section twenty-five and the north-west quarter of section twenty, and the north half of section nineteen and the west half of section eighteen and the north-east quarter of section thirty-one and the north half of the north-east quarter and the north-west quarter and the north half of the south-west quarter of section twenty-two, and the south half of section fifteen and the west half of section twenty-nine and the south half of section thirty-one, and the south-east quarter and the north-west quarter and the south-west quarter of section seventeen, and the north half of section twenty-seven, and the south-west quarter and the north-west quarter and the north-east quarter of section twenty and the south half of the south-west and the south half of the south-east quarter of section twenty-two and the south-west quarter of section nineteen, and the north half of section four, and the north half of the north-east quarter and the east half of the south-east quarter and the south-west quarter of section nine, all in township thirty-one range three west. Also the south-west quarter of section fifteen and the northeast

quarter of section thirteen, and the west half of the north-west quarter and the west half of the south-west quarter of section thirty-three, all in section thirty-two, and the south-west quarter of the south-west quarter and the north half of the north-west quarter of section eleven, and the south half of the south-west quarter of section two, all in township thirty-one range two west. Also the east half of section thirty-four and the east half of section eight and the south
93 half of section nine, and the south-east quarter of section thirty, and the west half of the south-west quarter of section thirty, and the north-west quarter of section thirty five, all in township thirty, range two west. Also the south half of section thirty-two, in township thirty in range three west. Also the south-west quarter of section four, and the south-east quarter of section five, and the north-east quarter and the north-east quarter of the south-west quarter, and the west half of the south-west quarter and north-west quarter of the south-east quarter of section two, and the north half of the south-east quarter of section three, and the northwest quarter of section seven, and the north half of the north-west quarter and the north-east quarter of section four, and the north half of the north-west quarter of section eight, and the north-east quarter of section twelve, and the south-west quarter and the north-east quarter of section six, all in township twenty-nine, range three west all said lands being in Knox county in Nebraska.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging.

To have and to hold the said premises unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the party of the first part has hereunto set his hand as marshall of the United States for the district of Nebraska the day and year first above written.

FRANK E. WHITE,
Marshall of the United States for the District of Nebraska.

In presence of
FANNIE M. PRATT.

STATE OF NEBRASKA, }
County of Douglas, } *ss:*

On the 18th day of Sept. 1894 before me personally
94 appeared Frank E. White, marshall of the United States for the district of Nebraska to me known to be the identical person who executed the foregoing deed as grantor and also to be the marshall of the United States for the district of Nebraska and thereupon he as such marshall acknowledged the execution of the foregoing instrument to be his voluntary act and deed.

In witness whereof, I have hereunto set my hand and notarial seal, the day and year last above written.

FANNIE M. PRATT,
[SEAL.] *Notary Public.*

Commission expires Feb'y 10, 1896.

On the back.

STATE OF NEBRASKA, } ss:
Knox County, }

Received for record this 20 day of Sept. A. D. 1894 at 9 o'clock and — minutes and recorded in Book S page 202 record.

CHAS. VAN CAMP, *Clerk.*

County clerk's office, Niobrara, April 5, 1897.

STATE OF NEBRASKA, } ss:
Knox County, }

I, Chas. Van Camp, county clerk and *ex-officio* recorder in and for said county, do hereby certify that the above — foregoing is a true copy of the original instrument as recorded in Book S of Deeds at page 202 in my office, and all endorsements thereon.

Witness my hand and the seal of said county this 5th day of April A. D. 1897.

CHAS. VAN CAMP,
Clerk of Knox County and ex Officio Recorder.

95 EXHIBIT "6."

Know all men by these presents, that we, Lionel C. Burr, and Aldana his wife, of the city of Lincoln, in the State of Nebraska, for the consideration of forty-five thousand ($45,000.) dollars to us in hand paid, the receipt whereof is hereby acknowledged do hereby grant, bargain, sell, convey and confirm unto J. C. Crawford and Richard C. Peters, of the city of West Point in said State, the following described lands situated in Knox county in said State:

The south-west quarter of section twenty-five, the north-west quarter of section twenty, the north half of section nineteen, the west half of section eighteen, the north-east quarter of section thirty-one, the north half of the north-east quarter of section twenty-two, the north-west quarter of section twenty-two, the north half of the south-west quarter of section twenty-two, the south half of section fifteen the west half of section twenty-nine, the south half of section thirty-one, the south-west quarter and the north-west quarter and the south-west quarter of section seventeen, and the north half of section twenty-seven and the south-west quarter and the north-west quarter and the north-east quarter of section twenty, and the south half of the south-west quarter and the south half of the south east quarter of section twenty-two, and the south-west quarter of section nineteen and the north half of section four, and the north half of the north-east quarter, and the east half of the southeast quarter and the south-west quarter, and the west half of the south-west quarter of section nine, all in township thirty-one, range three west. Also the south-west quarter of section fifteen, and the north-east quarter of section thirteen,
and the west half of the north-west quarter and the west half of
96 the south-west quarter of section thirty-three, all of section thirty-two, and the southwest quarter of the south-west quar-

ter, and the north half of the north-west quarter of section eleven, and the south half of the south-west quarter of section two, all in township thirty-one range two west. Also the east half of section thirty-four, and the east half of section eight, and the south half of section nine, and the south-east, quarter of section thirty, and the west half of the south-west quarter of section thirty, and the north-west quarter of section thirty, and the north-west quarter of section thirty-five, all in township thirty, range two west. Also the south half of section thirty-two in township thirty, range three west. Also the south-west quarter of section four and the south-east quarter of section five and the north-east quarter and the north-east quarter of the south-west quarter, and the west half of the south-west quarter and the north half of the south-east quarter of section three, and the north-west quarter and the north-east quarter of section four, all in township twenty-nine range three west. Also the north half of the north-west quarter of section eight and the north-east quarter of section twelve, and the south-west quarter of section six, and the north-east quarter of section six, all in township twenty-nine north range three west.

Together with all and singular the tenements, hereditaments thereunto in any wise appertaining.

To have and to hold unto the said Crawford and Peters, their heirs and assigns forever.

And we do hereby covenant to warrant and defend the said premises against all persons claiming by, through or under us.

97 In witness whereof, we have hereunto set our hands, this 19th day of May, one thousand eight hundred and ninety four.

LIONEL C. BURR.
ALDANA BURR.

In presence of
ROSCOE POUNED.

STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 19th day of May, eighteen hundred and ninety-four, before me personally appeared, Lionel C. Burr and Aldana Burr his wife, both of whom are personally known to me to be the identical persons who executed the foregoing instrument and acknowledged the same to be their voluntary act and deed.

Witness my hand and notarial seal, the day and year above mentioned.

[SEAL.] ROSCOE POUND,
Notary Public.

Commission expires July 21, 1896.

On the back: Deed. From Lionel C. Burr and Aldana Burr to J. C. Crawford and Richard C. Peters.

STATE OF NEBRASKA, } ss:
Knox County, }

Received for record this 28 day of May, A. D. 1894 at 9 o'clock and — minutes a. m. and recorded in Book S page 69 record.

CHAS. VAN CAMP, *Clerk,*
By P. B. CLARK, *Deputy.*

EXHIBIT "7."

Know all men by these presents, that we J. C. Crawford and wife Kate Crawford, Richard C. Peters and wife Maggie L. Peters of the county of Cuming and State of Nebraska for and in consideration of the sum of fourteen thousand four hundred ($14,000) dollars, in hand paid, do hereby grant, bargain, sell, convey, and confirm
98 unto Alvin L. Leigh of the county of Cuming and State of Nebraska the following described real estate, situated in the county of Knox and State of Nebraska to-wit:

The north half of section twenty-seven (27) the west half of section twenty-two (22) and the south half of the southeast quarter of section twenty-two (22), All in township thirty-one (31) north of range three (3) west of the 6th P. M. Containing seven hundred and twenty acres be the same more or less.

Subject to the taxes of 1894 and subsequent taxes.

Together with all the tene ents, hereditaments and appurtenances thereunto belonging. And we the said J. C. Crawford, Kate Crawford, Richard C. Peters & Maggie Peters do hereby covenant with the said Alvin L. Leigh and his heirs and assigns, that we are lawfully seized of said premises; that they are free from incumbrance; that we have good right and lawful authority to sell the same, and we do hereby covenant to warrant and defend the title to said premises against the lawful claims of all persons whomsoever.

And the said Kate Crawford and Maggie L. Peters hereby relinquishes all right of dower in and to the above described premises.

Dated this 23d day of May A. D. 1894.

J. C. CRAWFORD.
KATE CRAWFORD.
RICHARDS C. PETERS.
MAGGIE L. PETERS.

In presence of
GEO. N. ADAMS.

THE STATE OF NEBRASKA, } ss:
Cuming County, }

On this 29th day of May A. D. 1894, before me, —— —— a notary public duly commissioned and qualified for and residing — said county, personally came J. C. Crawford and wife Kate
99 Crawford, Richard C. Peters and wife Maggie L. Peters to me known to be the identical persons whose names are affixed to

the foregoing conveyance as grantor and acknowledged the said instrument to be their voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

GEO. N. ADAM,
Notary Public.

[SEAL.]

Commission expires Dec. 22, 1899.

On the back: Warranty deed from J. C. Crawford & wife — Richard C. Peters & wife to Alvin L. Leigh.

Entered on numerical index and filed for record in the clerk's office of said county the 12th day of July 1894, at 9 o'clock a. m. and recorded in Book Q of Deeds, page 492.

CHAS. VAN CAMP,
County Clerk.

County clerk's office, Niobrara, May 16, 1895.

STATE OF NEBRASKA, }
Knox County, } *ss:*

I, Chas. Van Camp, county clerk and *ex officio* recorder in and for said county, do hereby certify that the above — foregoing is a true copy of the original deed from J. C. Crqwford & wife & Richard C. Peters & wife to Alvin L. Leigh which was filed for record July 12, 1894, and recorded in Book Q of Deeds page 492, in my office, and all endorsements thereon.

Witness my hand and the seal of said county this 16th day of May A. D. 1895.

CHAS. VAN CAMP,
Clerk of Knox County and ex Officio Recorder,
By P. B. CLARK, *Deputy.*

[SEAL.]

EXHIBIT "A."

In the District Court within and for Douglas County, Nebraska.

100 ALGERNON S. PATRICK, Plaintiff,
vs.
ERWIN DAVIS, HENRY A. ROOT, J. N. H. PATRICK, and JAMES M. Woolworth, Defendants.

Now comes said plaintiff and says:

1. On the 21st day of January, 1890, said plaintiff recovered in the United States circuit court for the district of Nebraska, against the defendant Erwin Davis, a judgment for $65,000. and $383.60 costs on account of an indebtedness in favor of said plaintiff against said Davis, which accrued to him in the year 1878. The said judgment was recovered in an action brought by said plaintiff in the year 1880, wherein the lands hereinafter described were taken upon

a writ of attachment and the same were held by and under said writ at recovery of said judgment. The said judgment has never been paid, discharged, modified or reversed *by* remains in full force and effect.

2. After the levy of the said writ of attachment upon said lands and the same became bound thereby, the said Davis caused to be recorded in the clerk's office of Knox county in this State wherein said lands were situated, a deed purporting to have been made by him conveying said lands to the defendant Henry A. Root, which deed bore date and purported to have been executed on the 8th of October 1880. Said plaintiff charges that the said deed was not made or executed by said Davis until long after the levy of said attachment and was made for the express purpose of defeating the said attachment and putting said lands beyond the reach of said plaintiff. Said deed was without any consideration paid by
101 said Root therefor and said Davis has at all times been in possession of said lands and has paid taxes thereon and received the rents and profits arising therefrom, and said Root has never exercised control over said lands or any of them or claimed any interest therein and said deed was made to hinder, delay and defraud the creditors of said Davis, and particularly said plaintiff.

3. The lands hereinbefore referred to are described as follows:

The following described lands are all situate in township 31, north range 3 west in Knox county, Nebraska:

The south-west quarter of section 25; the north-west quarter of section 20; the north half of section 19; the west half of section 18; the north-east quarter of section 31; the north half of the north-east quarter of section 22; the north-west quarter of section 22; the north half of the south-west quarter of section 22; the south half of section 15; the west half of section 29; the south half of section 31; the south-east quarter and the north-west quarter and the south-west quarter of section 17; the north half of section 27; the north-east quarter and the north-west quarter and the south-west quarter of section 20; and the south half of the south-west quarter and the south half of the south-east quarter of section 22; and the south-west quarter of section 19; and the north half of section 4; and the north half of the north-east quarter and the east half of the south-east quarter and the east half of the south-west quarter and the west half of the south-west — of section 9; also the south-west quarter of section 15; and the north-east quarter of section 13; and the west half of the north-west quarter and the west half of the south-west quarter of section 33; all of section 32; the south-west quar-
102 ter of the south-west quarter and the north half of the north-west quarter of section 11; and the south half of the south-west quarter of section 2; all in township 31; north of range two (2) west.

Also the following described lands in township 30, north range 2 west in said county. The east half of section 34; the east half of section 8; south half of section 9; the south-east quarter and the west half of the south-west quarter of section 30; and the north-west quarter of section 35. Also the following tract in township 30, range

3, west, in said county. The south half of section 32. Also the following tracts in township 29 range 3 west in said county. The south-west quarter of section 4; the south-east quarter of section 5; the north-east quarter and the north-east quarter of the south-west quarter and the west half of the south-west quarter and the north-west quarter of the south-east quarter of section 2; the north half of the south-east quarter of section 3; the north-west quarter of section 7; the north half of the N. W. ¼ of section 4; the N. E. ¼ of section 4; the north half of the north-west quarter of section 8; the north east quarter of section 12; the south-west quarter and the north-east quarter of section 6; and the following tract in township 31 range 3 west in said county. The north-west quarter and the south half of the north-east quarter of section 4; and the following tract in township 30, range 3 west in said county. The south half of section 32.

4. The said deed is a cloud upon the title to said lands and stands in the way of said plaintiff realizing therefrom, their full value at any sale thereof under the said attachment. Said United States circuit court has ordered said attached property to be sold for the payment of said judgment. The defendants J. N. H. Patrick and James M. Woolworth have in their possession a large sum of money,
103 to-wit, $20,000.00 belonging — said Davis and which they are holding for him to apply on said judgment, but they refuse so to do.

Wherefore said plaintiff prays that it be decreed by this court that the said deed was made by said Davis to the said Root to hinder, delay and defraud creditors and particularly said plaintiff and that the same be set aside and all together help for naught and that said lands are free from any claim of the said Root thereon. And that the decree of this court operate as a deed of said Root to said Davis and be entitled to record in the clerk's office of Knox county in this State with the same force and effect as a deed from said Davis.

And that the said defendants Patrick and Woolworth pay to said plaintiff said sum of money held by them for said judgment.

And said plaintiff prays the costs of this proceeding and all such other and further relief as the circumstances require and is agreeable to equity.

ALGERNON S. PATRICK,
By BRENT K. YATES, *His Att'y.*

STATE OF NEBRASKA, }
County of Douglas, } ss:

Brent K. Yates being duly sworn says he is attorney for plaintiff in above petition, and he believes the facts stated therein to be true.

BRENT K. YATES.

Subscribed in my presence and sworn to before me this 31st day of March A. D. 1894.

FRANK A. SMITH,
Notary Public.

[SEAL.]

104 THE STATE OF NEBRASKA, } ss:
Douglas County, }

I, Alvin L. Frank, clerk of the district court, fourth judicial district of the State of Nebraska, in and for Douglas county, do hereby certify that the foregoing is a full and true copy of the petition in the case of Algernon S. Patrick, plaintiff *vs.* Erwin Davis, *et al.*, defendants, as appears from the original thereof now on file in the office of the clerk of said court.

Witness my signature and official seal, this 15th day of June, A. D. 1897.

[SEAL.] ALVIN L. FRANK, *Clerk.*

On the back: Docket 43 No. 315. In the district court, within and for Douglas county. State of Nebraska. Algernon S. Patrick plaintiff *versus* Erwin Davis, *et al.*, defendants. Petition. Filed March 31st, 1894, Frank E. Moores, clerk. B. K. Yates, attorney and counseller.

EXHIBIT "B."

In the District Court within and for Douglas County, Nebraska.

ALGERNON S. PATRICK, Plaintiff,
vs.
ERWIN DAVIS, HENRY A. ROOT, J. H. N. PATRICK, and James M. Woolworth, Defendants. } Answer.

Now come the defendants Erwin Davis and Henry A. Root and for answer deny each and every allegation in paragraph 2 of the petition and further deny that the deed mentioned therein is a cloud upon the title to the lands in said petition described.

ERWIN DAVIS AND
HENRY A. ROOT,
By J. P. ENGLISH,
Their Attorney.

105 STATE OF NEBRASKA, } ss:
County of Douglas, }

James P. English being duly sworn says that he is attorney for the defendants in the above answer; that they are absent from this State and he believes the facts stated in said answer are true.

JAMES P. ENGLISH.

Subscribed in my presence and sworn to before me, this 7th day of May, 1894.

FANNIE M. PRATT,
Notary Public.

[SEAL.]

THE STATE OF NEBRASKA, } ss:
Douglas County, }

I, Alvin L. Frank, clerk of the district court, fourth judicial district of the State of Nebraska, in and for Douglas county, do hereby

certify that the foregoing is a full and true copy of the answer in the case of Algernon S. Patrick, plaintiff, *vs.* Erwon Davis, *et al.*, defendants, as appears from the original thereof now on file in the office of the clerk of said court.

Witness my signature and official seal, this 22nd day of June, A. D. 1897.

[SEAL.] ALBYN L. FRANK, *Clerk.*

On the back: Docket 43 No. 315. Dist. court, Douglas Co. Neb. Algernon S. Patrick, plaintiff *vs.* Erwin Davis, *et al.*, defendants. Answer. Filed May 7th, 1894. Frank E. Moores, clerk.

EXHIBIT "C."

In the District Court within and for Douglas County, Nebraska.

ALGERNON S. PATRICK, Plaintiff,
vs.
106 ERWIN DAVIS, HENRY A. ROOT, J. N. H. PATRICK, and James M. Woolworth, Defendants. } Answer.

Now come the defendants J. H. N. Patrick and James M. Woolworth and for answer to the petition, say that at or about the time this action was commenced, these defendants had in their hands $14,000 realized from the sale of land in this State which had belonged to said Davis and which he conveyed to said Root, and these defendants have deposited said sum with said plaintiff but he has not credited the same on said judgment; that these defendants have no other moneys belonging to said Davis or to which he lays claim.

ROB'T W. PATRICK,
Attorney for J. H. N. Patrick.
JAMES M. WOOLWORTH,
Attorney for Self.

STATE OF NEBRASKA, } ss:
County of Douglas, }

James M. Woolworth, being duly sworn says he is one of the defendants in the above entitled answer; that he has read said answer; and the facts stated therein are true, as he verily believes.

J. M. WOOLWORTH.

Subscribed in my presence and sworn to before me, this 7th day of May, 1894.

FANNIE M. PRATT,
[SEAL.] *Notary Public.*

STATE OF NEBRASKA, } ss:
Douglas County, }

107 I, Albyn L. Frank, clerk of the district court, fourth judicial district of the State of Nebraska, in and for Douglas county, do hereby certify that the foregoing is a full and true copy

of the answer in the case of Algernon S. Patrick, plaintiff, *vs.* Erwin Davis *et al.*, defendants, as appears from the original thereof now on file in the office of the clerk of said court.

Witness my signature and official seal, this 22nd day of June A. D. 1897.

[SEAL.] ALBYN L. FRANK, *Clerk.*

On the back: Docket 43, No. 315. Dist. court, Douglas Co., Neb. Algernon S. Patrick, plaintiff, *v.* Erwin Davis *et al.*, defendants. Answer. Filed May 7th, 1894. Frank E. Moores, clerk.

EXHIBIT "D."

In the District Court within and for Douglas County, Nebraska.

ALGERNON S. PATRICK, Plaintiff,
vs.
ERWIN DAVIS ET AL., Defendants. } Reply.

Now comes the plaintiff by Brent K. Yates, his attorney and for reply to the answer of the defendants John N. H. Patrick and James M. Woolworth admits that after this action was commenced the said defendants paid to this plaintiff the sum of fourteen thousand ($14,000.00) dollars, moneys belonging to the defendant Davis, and that they at that time had and now have no other moneys belonging to said defendant Davis.

ALGERNON S. PATRICK,
By BRENT K. YATES,
His Attorney.

STATE OF NEBRASKA, *County of Douglas,* } *ss:*

108 Brent K. Yates of lawful age being first duly sworn, deposes and says that he is attorney for the plaintiff in the above-entitled case; that he has read the foregoing reply, and that the same is true.

BRENT K. YATES.

Subscribed in my presence and sworn to before me this 12th day of May A. D. 1894.

[SEAL.] FRANK A. SMITH,
Notary Public.

THE STATE OF NEBRASKA, *Douglas County,* } *ss:*

I, Albyn L. Frank, clerk of the district court, fourth judicial district of the State of Nebraska, in and for Douglas county, do hereby certify that the foregoing is a full and true copy of the reply in the case of Algernon S. Patrick, plaintiff, *vs.* Erwin Davis, *et al.*, defendants, as appears from the original thereof now on file in the office of the clerk of said court.

Witness my signature and official seal, this 22nd day of June, A. D. 1897.

[SEAL.] ALBYN L. FRANK, *Clerk.*

On the back: Docket 43 No. 315. In the district court, within and for Douglas county, State of Nebraska. Algernon S. Patrick, plaintiff, *vs.* Erwin Davis, *et al.*, defendant-. Reply. Filed May 12th, 1894. Frank E. Moores, clerk. B. K. Yates.

EXHIBIT "E."

District Court, Knox County.

MATTHEWSON T. PATRICK *vs.* ERWIN DAVIS. } Attachment.

STATE OF NEBRASKA, *Douglas County,* } *ss:*

109 Matthewson T. Patrick, plaintiff above named, being sworn says; that the above entitled action of affiant against the said Erwin Davis is founded upon an account stated between said parties for and on account of the services of affiant as superintendent of the Flagstaff mine in the Territory of Utah, between the 1st day of December A. D. 1873, and the 1st day of October A. D. 1875; that the said claim of affiant is just and that affiant ought to recover thereon the sum of $4735.63 with interest thereon at the rate of ten per cent. per annum from the 1st day of October 1875; affiant also says that the said Erwin Davis is a non-resident of said State of Nebraska.

M. T. PATRICK.

Sworn to and subscribed before me this 20th day of November A. D. 1880.

W. H. S. HUGHES,
Notary Public.

Endorsed: Filed Nov. 24, 1880 Vac Randa, clerk D. C.

UNITED STATES OF AMERICA, *District of Nebraska,* } *ss:*

I, Oscar B. Hillis, clerk of the circuit court of the United States for the district of Nebraska, certify that I have compared the annexed copy of affidavit of attachment: filed in the district court of Knox county in the case of Matthewson T. Patrick *vs.* Erwin Davis, No. 282 "G" with the original on file in this office, and that the same is a correct transcript thereof, and of the whole of said original.

In testimony whereof, I have caused the seal of said court to be hereunto affixed at the city of Omaha, in said district, this 19th day of July 1897.

[SEAL.] OSCAR B. HILLIS, *Clerk.*

110 THE STATE OF NEBRASKA, } ss:
Knox County, }

In the District Court of said County.

MATTHEWSON T. PATRICK, Plaintiff, }
vs.
ERWIN DAVIS, Defendant. }

The State of Nebraska to the sheriff of said county, Greeting:

You are commanded to attach and safely keep the lands, tenements, goods, chattels, stocks, or interest in stocks, rights, credits, moneys and effects of the above named defendant in your county not exempt by law from being applied to the payment of the above named plaintiff's claim, or so much thereof as will satisfy the said plaintiff's claim for four thousand seven hundred and thirty-five and $\frac{63}{100}$ (4,735.63) — and interest from Oct. 1" 1875, — dollars: and fifty dollars, the probable costs of this action.

You will make due return of this order on the sixth day of December A. D. 1880.

Witness, my hand and the seal of said court, at Niobrara, this 24th day of November, A. D. 1880.

VAC RANDA,
[SEAL.] *Clerk of said Court.*

Endorsed: Returned and filed Dec. 6th 1880, Van Randa, clerk. Received this 25th of Nov. A. D. 1880. D. Armstrong sheriff, by J. P. Reed, deputy.

Received this 25 day of November 1880; I did not serve the copy as the defendant is a non-resident and was absent from the county.
D. ARMSTRONG, *Sheriff,*
By J. P. REED, *Deputy.*

111 According to the command of the within order of attachment, I did on the 1st day of December, A. D. 1880, attach in the presence of George W. Bly, and R. C. Matthews, two residents of said county, the following lands and tenements to wit: The north half of section four, township thirty-one, north of range three west, and the north half of the north-east quarter and the east half of the south-east quarter of section nine and the southwest quarter of section twenty-five in township thirty-one north; all of range three, west of the sixth principal meridian, and the east half of section thirty-four in township thirty- north of range two, west, and the south-west quarter of section two, and the north half of the north-west quarter of section 11 and the south-east quarter of the south-west quarter of section 11 and the north-east quarter of section thirteen and the south-west quarter of section fifteen in township thirty-one north of range two, west and the south-east quarter of section thirty and the west half of the south-west quarter of section

thirty and the north-west quarter of section thirty-five in township thirty north; all of range two west and the north half of section nineteen and the south-west quarter of section nineteen and the north-west quarter of section twenty and the west half of section eighteen and the north-east quarter of section thirty-one in township thirty-one, north of range three west and the south-east quarter of section five, and the south-west quarter of section four and the north-east quarter of section two and the northeast quarter of the south-west quarter of section two and the north-east quarter of the south-west quarter and the west half of the south-west quarter
of section two and the north-west quarter of the south-
112 east quarter of section two and the north half of the south-east quarter of section three, in township twenty-nine, north of range three, west and south half of section fifteen and north-west quarter of section twenty-two and the north half of the south-west quarter and north half of north-east quarter of section twenty-two in township thirty-one north of range three west and east half of section eight in township thirty north of range two west, and the west half of the north-west quarter and west half of south-west quarter of section thirty-three in township thirty-one, north of range two west and the south half of section nine in township thirty north of range two west and all of section thirty-two in township thirty-on- north of range two west and the north-west quarter of section seven in township twenty-nine north of range three west and the south half of section thirty-two in township thirty north of range three west and the west half of section twenty-nine and the south half of section thirty-one in township thirty-one north of range three west and the south half of the south-west quarter and south half of south-east quarter of section twenty-two and the north half of section twenty-seven and the south-west quarter of the north-east quarter of section twenty and the north-west quarter and the south-west — and the south-east quarter of section seventeen, all in township thirty-one, north of range three, west, north half of north-west quarter, section four and north half of northwest quarter of section eight and the north-east quarter of section twelve and the north-east quarter of the south-west quarter of section six in township twenty-nine, north of range three west, and the east half of the south-west quarter and west half of south-east quarter of section nine
in township thirty-one north of range three, west, all situate
113 in Knox county, Nebraska, and in connection with said George W. Bly and R. C. Matthews, having first duly sworn the said George W. Bly and R. C. Matthews, made an inventory and valuation thereof in writing which is herewith returned and finding no occupant on said premises, I left posted up in a conspicuous place thereon certified copies of this order.

D. ARMSTRONG, *Sheriff.*
By J. P. REED, *Dep'y.*

Fees.

Service	.50
Mileage, 80 miles	4.00
Calling appraisers	.50
Appr's fees	4.00
Mileage	1.50
Total	10.50

Endorsed: Filed Dec. 6, 1880. Vac Randa, clerk D. C.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I, Oscar B. Hillis, clerk of the circuit court of the United States for the district of Nebraska, certify that I have compared the annexed copy of writ of attachment and return of sheriff, issued in the district court of Knox county, in the case of M. T. Patrick *vs.* Erwin Davis, No. 282 "G" with the original on file in this office, and that the same is a correct transcript thereof, and of the whole of said original.

In testimony whereof, I have caused the seal of said court to be hereunto affixed at the city of Omaha, in said district, this 19th day of July 1897.

[SEAL.] OSCAR B. HILLIS, *Clerk.*

EXHIBIT "8."

Case No. 846.

501.—*Sheriff or Master Commissioner's Deed.*

114 Know all men be these presents: That whereas, the Farmers Loan & Trust Company did, by virtue of the judgment of the district court of the 9th judicial district of the State of Nebraska, within and for the county of Knox at the November term thereof, A. D. 1891, recover a judgment against Henry A. Root and N. E. ¼ of section (27) township (31) range (3) west for the sum of seventy-seven dollars and forty-seven cents, and costs of suit taxed at twenty-three dollars and eighty-three cents; and seven dollars and seventy-five cents, and whereas it was then and there further ordered in the said action that in default of the payment of the judgment aforesaid, by the said Henry A. Root and the N. E. ¼ section (27) township (31) range (3) west that the sheriff of Knox county, Nebraska, should cause the lands and tenement- hereinafter described to be appraised advertised and sold according to law; and whereas the said Henry A. Root and N. E. ¼ section (27) township (31), range (3) west having made default therein, the said sheriff of Knox county, Nebraska under and by virtue of the order of the same to him duly directed, did, on the fourth day of May 1892, at one o'clock p. m. of said day at the front door of the G. A. R. hall in Niobrara, Knox

county, Nebraska, that being the building wherein the last term of the district court of said county was held in said county of Knox, having first given due and legal notice of the time and place of said sale, for not less than thirty days prior thereto, in the Niobrara Pioneer, a newspaper printed and in general circulation in said county of Knox, sell the said premises at public auction to H. S. Green of Crawford county, State of Iowa, for the sum of four hundred and ninety dollars which sale was afterwards, at the April term
115 of said court, A. D. 1892 examined and confirmed, and the said sherih of Knox county, Nebraska, as such sheriff of Knox county, Nebraska, ordered to convey the said premises in fee simple to the said H. S. Green of Crawford county, Iowa.

Now, therefore, I the said Charles Crockett, sheriff of Knox county, Nebraska, as aforesaid, in consideration of the premises, and by virtue of the powers vested in me by law, do hereby give, grant, and convey to the said H. S. Green of Crawford county, State of Iowa, his heirs and assigns. the premises so as aforesaid sold, to-wit; the north-east quarter (N. E. ¼) of section (27) in township (31) range (3) west of the sixth P. M. in Knox county, Nebraska, subject to liens as shown on the records of the county clerk's office, county treasurer's office, and clerk of the district court office with appurtenances.

To have and to hold the sa-e to the said H. S. Green of Crawford county, State of Iowa, his heirs and assigns, and to them and their use and behoof forever.

In testimony whereof, I have as such sheriff of Knox county, Nebraska, hereunto set my hand this 16th day of May, A. D. 1892.

CHARLES CROCKETT,
Sheriff of Knox County, Nebraska.

Executed and delivered in presence of—

FRANK LUNDAK.
W. M. McCLINTOCK.

THE STATE OF NEBRASKA, }
Knox County, } *ss:*

Personally appeared before me, the undersigned, clerk of the district court of said Knox county, the said Charles Crockett sheriff of said county, and acknowledged the foregoing instrument of writing for the purposes therein set forth, to be his free act and deed.
116 Given under my hand and seal this seventeenth day of May, A. D. 1892.

J. T. LINDSAY, JR.,
Clerk of the District Court.

EXHIBIT "9."

In the District Court of the State of Nebraska in and for Knox County.

THE FARMERS' LOAN & TRUST COMPANY, Plaintiff,
vs.
HENRY A. ROOT and THE NORTHEAST Quarter of Section 27, Township 31, Range 3 West, of the 6th P. M., Defendants.
} Petition in Chancery.

The plaintiff states:

Paragraph 1. That it is a corporation duly and legally incorporated under the laws of the State of Iowa and doing business in said State and the State of Nebraska:

Par. 2. That included in the powers of said corporation is the right to invest in tax sale certificates and to buy, own and control real estate:

Par. 3. That on the 13th day of June 1888 at a regular private tax sale, held in and for the county of Knox in the State of Nebraska, the plaintiff purchased for the taxes then due thereon the following described real estate situated in said county to-wit:

The north-east quarter of section No. twenty-seven (27) in township No. thirty-one (31) of range No. three (3) west sixth P. M.:

117 Par. 4. That at said time the plaintiff paid to county treasurer of said county the amount of taxes due on said land, to-wit: the sum of twenty-four & 50/100 dollars, and received from said county treasurer a certificate of such purchase.

Par. 5. That thereafter under and by virtue of said tax sale and tax certificate the plaintiff paid subsequent taxes on said land as follows:

On the 10th day of August 1888 the sum of twenty-one & 79/100 dollars.

On the 9th day of July 1889 the sum of nineteen & 63/100 dollars.

Par. 6. That thereafter and not less than three months nor more than five months before the expiration of two years from the time of such tax sale, to-wit, on or about the — day of —— 1890, the plaintiff caused to be served on every person in actual possession of such land, and the person in whose name the land was taxed, a notice stating when plaintiff purchased such land, in whose name taxed, the description of the land purchased, for what year taxed, and when the time of redemption would expire, as required by section 123 chapter 77 of the Statutes of Nebraska, and made proof by affidavit to the county treasurer of said county of the compliance with said statute:

Par. 7. That after the making of said proof and upon the compliance with all the provisions of the statutes relating thereto and

at the expiration of the time of redemption from such sale to-wit, on or about the 25th, day of September 1890, the county treasurer of said Knox county, Nebraska, executed and delivered to the plaintiff a deed conveying to said plaintiff the land hereinbefore described:

Par. 8. That in serving the notice mentioned in paragraph 6 hereof the plaintiff has incurred and paid actual and legal costs in the sum of five dollars:

118 Par. 9. That it is informed and believes and therefore charges the fact to be that the owner of said land is not known and that the defendant Henry A. Root has or claims some interest therein. Wherefore plaintiff prays that its lien for the said amount of taxes so paid by it, with interest thereon at the rate provided by statute from the several times of payment, be fully established and decreed to be the first and paramount lien upon said land, that plaintiff be allowed an attorney's fee equal to ten per cent. of the amount of such decree, and costs of suit; that said lien be foreclosed and said land be ordered sold to satisfy the full amount of said decree with interest, attorney's fees and costs of suit, costs of serving notice of the expiration of the time of redemption, and accruing costs; that the sheriff or other person making said sale be ordered to put the purchaser thereunder in possession of said premises; that the deed issued under said sale be an absolute bar against each and all of the defendants and any and all persons claiming under such defendant, and against all other persons, and for such other and further relief as may be deemed equitable in the premises.

M. J. SWEELEY,
Attorney for the Plaintiff.

STATE OF IOWA, }
Woodbury County, } ss:

I, James F. Toy being sworn, do state that I am treasurer of The Farmers Loan & Trust Company, the plaintiff above named, that said plaintiff is a corporation, that I have read the foregoing petition and know its contents, and that the statements therein contained are true as I verily believe.

JAMES F. TOY, *Treasurer.*

119 Subscribed in my presence and sworn to before me this 28th day of September A. D. 1891.

L. GREENWOOD,
[SEAL.] *Notary Public.*

Office of clerk of the district court, Niobrara, Neb., July 11, 1896.

STATE OF NEBRASKA, }
Knox County, } ss:

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original petition in case No. 846, wherein The Farmers Loan

& Trust Co. was plaintiff and Henry A. Root, and the N. E. ¼ of Sec. 27, Twp. 31 R.–3–W.–6th P. M. were defendants now on file in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 11th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in Knox County, Nebraska.

Endorsed: Copy, Farmers Loan & Trust Co. *vs.* Henry A. Root, N. E. ¼–27–31–3 Petition in chancery. The State of Nebraska, Knox county, *ss.* Filed this 30th day of September A. D. 1891, A. L. Jones, clerk of the district court.

In the District Court of Knox County, Nebraska.

FARMERS LOAN & TRUST CO., Plaintiff, *vs.* HENRY A. ROOT and N. E. ¼, Sec. 27, Twp. 31, Range 3 West, 6th P. M., Defendants. } Affidavit for Publication of Notice.

120 STATE OF IOWA, *Woodbury County,* } *ss:*

I, M. J. Sweeley, being first duly sworn, do state that I am the attorney for the plaintiff above named; that this case is one of those mentioned in section 77, title v of the Code of Civil Procedure of the State of Nebraska, and is an action relating to real property in said State in which the defendants have or claim a lien or interest actual or contingent, and the relief demanded consists wholly or partially in excluding the defendants from any interest therein; that the defendant Henry A. Root is a non-resident of the State of Nebraska and that service of summons cannot be made on him within said State.

I further state that the owner of the real estate involved in said action, and described above is not known; all of which I verily believe to be true.

M. J. SWEELEY.

Subscribed and sworn to before me this 28th day of September 1891.

[SEAL.] L. GREENWOOD,
Notary Public.

Office of clerk of the district court, Niobrara, Neb., July 11, 1896.

STATE OF NEBRASKA, *Knox County,* } *ss:*

I, R. H. Harris, clerk of the district court in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy

of the original affidavit for publication of notice in case No. 846 wherein The Farmers Loan & Trust Co. was plaintiff and Henry A. Root and N. E. ¼ of Sec. 27–Twp. 31 Range 3–W.–6th P. M. were defendants, now on file in my office and all endorsements thereon.

121 Witness my hand and the seal of said court this 11th day of July 1896. A. D.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County.

Endorsed: Farmers Loan & Trust Company *vs.* Henry A. Root N. E. ¼ 27–31––3. Affidavit The State of Nebraska, Knox county, *ss.* Filed this 30th day of September A. D. 1891, A. L. Jones, clerk of the dist court.

THE STATE OF NEBRASKA, } *ss:*
Knox County, }

We, S. Saunders and William C. Miller, two disinterested freeholders and residents of Knox county, were by the sheriff of said county called on an inquest to appraise the interest of Henry A. Root and N. E. ¼ sec. 27, twp. 31, range 3 W. in the following lands and tenements, to-wit:

The north-east quarter of section twenty-seven (27) township thirty-one (31) range three (3) west of the 6th P. M. in Knox county Nebraska.

Levied upon by said sheriff as the property of the above defendants on an order of sale in favor of Farmers Loan & Trust Co., and against the said defendants, and having taken the oath required by law do with said sheriff appraise the same as follows:

Gross value of said lands and tenements	$800.00
Taxes, as per county treasurer's certificate	$66.39
Mechanic' lien, as per county clerk's certificate	
Judgments, as per clerk of dist. court's certificate	
Total liens and incumbrances	
Which, deducted from the gross value of said real estate, leaves	$733.61

122 which we appraise as the real value in money of the interest of above defendants in said lands and tenements.

Dated this 3d day of December, 1891.

S. SAUNDERS.
WM. C. MILLER.
JOHN DOLPHIN, *Sheriff.*

I hereby certify that the above named S. Saunders and William C. Miller are freeholders and residents of said Knox county and that they were by me duly summoned and sworn to make the appraisement as above set forth on the day and year last above written.

JOHN DOLPHIN, *Sheriff.*

Office of clerk of the district court, Niobrara, Neb., July 11, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original appraisal copy in case No. 846, wherein The Farmers Loan & Trust Company was plaintiff and Henry A. Root and N. E. ¼ of Sec. 27–Twp. 31–R.–3–W.–6th P. M. were defendants, now on file in my office, and all endorsements thereon.

Witness my hand and *and* the seal of said court this 11th day of July A. D. 1896.

[SEAL.]

R. H. HARRIS,
Clerk of the District Court in and for Knox County.

Endorsed: 846. The State of Nebraska, Knox county, ss. Filed this 3rd day of December A. D. 1891, A. L. Jones cl'k district court.

123 *Application of Sheriff to County Clerk, Clerk of the District Court, and County Treasurer.*

To F. Nelson, county clerk:

You are hereby required to certify, under your hand and official seal, the amount and character of all liens existing against the following described land, to-wit:

N. E. ¼, sec. 27 twp. 31 range 3 west.

On the 2nd day of December 1891 as they appear of record in your office.

Dated this 2nd day of Dec. 1891.

JOHN DOLPHIN, *Sheriff.*

The following liens appear of record in this office against the above described land to-wit: No incumbrances.

I, F. Nelson Co. clerk of Knox county hereby certify that I have correctly stated above the amount and character of all liens existing against the above described lands and tenements and also all incumbrances thereon which appear of record in my office, on the 2nd day of Dec. 1891.

In witness whereof, I have hereunto set my hand and affixed my official seal this 2nd day of Dec. 1891.

[SEAL.]

F. NELSON, *Co. Clerk.*

Office of clerk of the district court, Niobrara, Neb., —— —, 189–.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska do hereby certify that the above — foregoing is a true copy of the original certificate of the Co. cl'ks in case No. 846,

wherein The Farmers Loan & Trust Co. was plaintiff and Henry A. Root and N. E. ¼ of Sec. 27–Twp. 31–R. 3–W.–6th P. M. were defendants now on file in my office and all endorsements thereon.

124 Witness my hand and the seal of said court this 11th day of July *11*, A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Application of Sheriff to County Clerk of District Court and County Treasurer. 846.

To G. G. Bayha, county treasurer:

You are hereby required to certify, under your hand and official seal, the amount and character of all liens existing against the following described lands, to wit: N. E. ¼, sec. 27, twp. 31 range 3 W. On the 2nd day of Dec. 1891 as they appear of record in your office. Dated this 2d day of Dec. 1891.

JOHN DOLPHIN, *Sheriff.*

The following liens appear of record in this office against the N. E. ¼ sec. 27, twp. 31, range 3 W. of the 6th P. M. in Knox county Nebr. to-wit: Sold for the taxes of 1899. Subsequent taxes of 1890 paid by purchaser.

Amount to redeem	$51.05
Tax for 1891 due and unpaid	15.34
	$66.39

Sold at private sale for the taxes of 1880/82 Feb'y 3/87.

Amount sold for $54.72

Sold at private sale for taxes 83–85 May 28/87

Amount sold for $50.58

I, Geo. G. Bayha, treas. of Knox county, hereby certify that I have correctly stated above the amount and character of all liens existing against the above described lands and tenements and also all incumbrances thereon which appear of record in my office, on the 2nd day of Dec. 1891.

125 In witness whereof, I have hereunto set my hand and affixed my official seal this 2d day of Dec. 1891.

[SEAL.] GEO. G. BAYHA,
Co. Treasurer.

Office of clerk of the district court, Niobrara, Neb., July 11, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original certificate of the Co. treasurer in case No. 846, wherein Farmers Loan & Trust Co. was plaintiff and Henry A. Root, N. E. ¼ Sec. 27–Twp. 31–R. 3–W. 6th P. M. were defendants. Now on file, in my office and all endorsements thereon.

Witness my hand and the seal of said court this 11th day of July A. D. 1896.

R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Application of Sheriff to County Clerk of the District Court — County Treasurer. 846.

To A. L. Jones, clerk dist. court:

You are hereby required to certify, under your hand and official seal, the amount and character of all liens existing against the following described land, to-wit: N. E. ¼, sec. 27, twp. 31, range 3 west. On the 2nd day of December 1891 as they appear of record in your office Dated the 2nd day of Dec. 1891.

JOHN DOLPHIN, *Sheriff.*

The following liens appear of record in this office against the above described land to-wit: Decree of foreclosure in favor of Farmers Loan & Trust Co.

	Amount of judgment	$77.47
	Costs	23.83
126	Attorneys' fees	7.75

I, A. L. Jones, clerk dist. court of Knox county, hereby certify that I have correctly stated above the amount and character of all liens existing against the above described lands and tenements, and also all incumbrances thereon which appear of record in my office on the 2nd day of Dec. 1891.

In witness whereof, I have hereunto set my hand and affixed my official seal this 2nd day of Dec. 1891.

[SEAL.] A. L. JONES, *Clerk.*

Office of clerk of the district court, Niobrara, Neb., July 11, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county Nebraska do hereby certify that the above — foregoing is a true copy of the original certificate of cl'k dist. court in case No. 846 wherein Farmers Loan & Trust Co. was plaintiff and Henry A. Root and

N. E. ¼ Sec. 27–Twp. 31–Range 3–W.–6th P. M. — now on file in my office and all endorsements thereon.

Witness my hand and the seal of said court this 11th day of July A. D. 1896.

R. H. HARRIS,
[SEAL.] *Clerk of the District Court in and for Knox County, Neb.*

In the District Court of Knox County, Nebraska.

THE FARMERS LOAN & TRUST COMPANY, Plaintiff,
vs.
HENRY A. ROOT and THE NORTHEAST QUARTER OF Section Twenty-seven (27), Township Thirty-one (31), Range Three (3) West, 6th P. M., Defendants. } Legal Notice.

127 The State of Nebraska, Knox county, to the above named defendants and all persons interested in said real estate:

You are hereby notified that the petition of plaintiff is now on file in the district court of Knox county Nebraska wherein plaintiff claims that it purchased said real estate for taxes due thereon in the sum of twenty-four dollars and fifty cents at the tax sale held in said county on the 13th day of June 1888, that under said sale it has paid subsequent taxes on the said land as follows to wit:

On the 10th day of August 1888 nine dollars and nine cents and on the 9th day of July 1889 nineteen dollars and sixty-three cents for which sums with interest as provided by statute plaintiff claims the first lien against said premises and asks foreclosure thereof and that the said property be sold to satisfy the amount due plaintiff together with the further sum of ten per cent. of said amount as attorney's fees and costs of suit and you are further notified to appear and answer said petition on or before Monday the 9th day of November 1891 or the petition will be taken as true and judgment rendered accordingly dated this 30th day of September, 1891.

FARMERS LOAN & TRUST COMPANY.
B. M. J. SWEELEY, *Its Attorney.*

Publisher's Affidavit. 846.

THE STATE OF NEBRASKA, *Knox County,* } *ss:*

I, Ed O. Fry being first duly sworn depose and say that I am the publisher of the Niobrara Pioneer a weekly newspaper of general circulation printed and published in said county and that the
128 annexed notice was published in the original body of said paper for four consecutive weeks the first publication being in the regular issue of October 2nd 1891 and ending with the regular issue of October 23rd 1891 and further I saith not.

ED A. FRY.

Subscribed in my presence and sworn to before me this 9th day of November 1891

H. WESTERMAN,
Notary Public.

[SEAL.]

Office of clerk of the district court, Niobrara, Neb., July 11, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above and foregoing is a true copy of the original legal notice and publisher's affidavit in case No. 846 wherein Farmers Loan & Trust Co. was plaintiff and Henry A. Root and N. E. ¼ Sec. 27–Twp. 31 Range 3–W.–6th P. M. — now on file, in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 11 day of July A. D. 1896.

[SEAL.]

R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Endorsed: The State of Nebraska, Knox county, ss. Filed this 9th day of November A. D. 1891 A. L. Jones clerk of the dist. court.

EXHIBIT "F."

Decree of Foreclosure. No. 846.

129 FARMERS LOAN AND TRUST COMPANY, Plaintiff,
vs.
HENRY A. ROOT and N. E. ¼ SECTION 27, TOWNSHIP 31, RANGE 3 West, Defendant-.

At a session of the district court of the State of Nebraska in and for Knox county, holden at Niobrara, in said county, on the tenth day of November, 1891, the Honorable Isaac Powers, Jr. being present and presiding in said court, the following among other proceedings were had and done, to-wit:

Be it remembered, that on this tenth day of November, 1891, this cause came on to be heard before the court, the plaintiff appearing by M. J. Sweeley and S. Draper its attorneys, the defendants not appearing in person or by attorney and failing to appear plea- or answer, the plaintiff demands a default against the defendants Henry A. Root and The North-east Quarter of Section Twenty-seven Township 31 Range 3 West of the 6th P. M. in Knox County, Nebr. for want of appearance, plea, or answer, and also that a decree be entered in this cause against the defendants as prayed for in the petition. The court finds that due and legal notice of the filing and pendency of this action was given the said defendants, and that they have failed to appear and

plead in said cause in the time and manner provided for by law; and said defendants, being three times solemnly called in open court, and still failing to answer, demur or otherwise plead, are adjudged to be in default. A default is therefore hereby entered against the defendants, and each of them, viz; Henry A. Root and North-east Quarter of Section Twenty-seven Township 31 Range 3 West
130 of the 6th P. M. in Knox County, Nebr. said cause having been duly submitted to the court, upon the pleadings and evidence, and the court having fully considered the same, the court finds that the plaintiff purchased at a legal tax sale held in said county of Knox and State of Nebraska on the — day of —— 188– for the taxes due thereon the following described real estate situate in the county of Knox and State of Nebraska, to-wit: The north-east — section twenty-seven, township 31 range 3 west of the 6th P. M. in Knox county Nebr., and that said taxes are a first lien on said described land, and paramount and superior to any right, title, lien, or interest in, to or against the same of any of the defendants in this action or any other person. The court also finds that the plaintiff is the owner of the tax certificate of sale, as set forth in plaintiff's petition, and that said plaintiff is entitled to a decree foreclosing said lien for the amount due upon said taxes. The court also finds that there is due the plaintiff upon the tax sale and payments set forth in the petition, the sum of $77.47 together with the sum of $7.75 the fees as is provided by statute.

It is therefore considered, adjudged, and decreed by the court, that in case the defendants fail for twenty days from the entry of this decree to pay or cause to be paid to the plaintiff the sum of $85.22 so found due, with interest thereon at the rate of ten per cent. per annum from the date hereof together with the costs of this action taxed at $23.83, that the defendants be foreclosed of all equity of redemption, or other interests in said premises; that said premises be sold and an order of sale shall be issued to the sheriff of Knox county, Nebraska, commanding him to sell the above described premises, as upon execution, and bring the proceeds
131 thereof into court, to be applied in satisfaction of the sums so found due, in the order of their priority, as above found, and costs upon the confirmation of said sale.

——— ———,
Judge of the District Court.

EXHIBIT "G."

In the District Court of Knox County, Nebraska.

THE FARMERS LOAN & TRUST COMPANY }
vs. }
——— ———. }

The following decrees of confirmation includes all the following cases: No. 804, 806, 809, 813, 814, 819, 820, 821, 825, 826, 827, 833, 835, 837, 843, 846, 851.

Be it remembered that on the 23rd day of April, 1892, the same being the 5th judicial day of the regular April 1892 term of this court this cause coming on for final hearing on the sale of real estate heretofore to-wit, on the — day of January, 1892, made by John Dolphin, sheriff, pursuant to the decree and order of sale herein the court therefore having carefully examined the proceedings of said officer under such order of sale finds that all of such proceedings are regular and valid and is satisfied of the legality of such sale and that the same has been in all respects made in conformity to law and particularly to the provisions of title fourteen of the Code of Civil Proceedure of the State of Nebraska. It is therefore ordered, adjudged and decreed by the court that said sale be and the same is hereby approved and confirmed and the sheriff of said county of Knox, Nebraska, is ordered to execute to the purchaser of said land a deed thereto and the clerk of this court is directed to make this entry upon the journal of this court.

Recorded on Journal 3, at page 149 records of Knox Co., Neb.

EXHIBIT "H."

132 122. *Order of Sale.*

Copy.

THE STATE OF NEBRASKA, }
Knox County, } *ss.*:

The State of Nebraska to the sheriff of said county:

To the sheriff of said county, Greeting:

In the district court within and for the county of Knox and State of Nebraska, in a certain action in the district court pending wherein Farmers Loan & Trust Company, plaintiff and Henry A. Root and N. E. ¼ Sec. 27, Tp. 31, Range 3 West, defendant-.

You are hereby commanded to appraise, advertise, and sell according to law, the following described premises to-wit: The northeast quarter of section twenty-seven (27) township thirty-one (31) range (3) west of the 6th P. M. in Knox county, Neb., to satisfy a judgment obtained in our said court at the November A. D. 1891 term thereof, to-wit: on the 10th day of November A. D. 1891 wherein the said Farmers Loan & Trust Company recovered of the said Henry A. Root and N. E. ¼ Sec. 27, Twp. 31, Range 3 West on the consideration of our said court the sum of seventy-seven dollars and forty-seven cents, and his costs taxed at twenty-three dollars and eighty-three cents, and seven & 75/100 dollars attorney's fee, and of your proceedings therein you report to our said court on the first day of the next term thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of our said district court, at Niobrara, Nebraska. this 1st day of December, A. D. 1891.

[SEAL.]
11—422

A. L. JONES, *Clerk.*

Office of clerk of the district court, Niobrara, Neb., July 11, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox
133 county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original order of sale in case No. 846 wherein The Farmers Loan & Trust Co. was plaintiff and Henry A. Root and N. E. ¼ Sec. 27–Twp. 31–R. 3 W.–6th P. M. were defendants, now on file in my office and all endorsements thereon.

Witness my hand and the seal of said court this 11th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of District Court in and for Knox County, Neb.

Endorsed: Cert. applied for (122) Order of sale — court. Doc. 2, No. 846, page 119. Farmers Loan & Trust Company, plaintiff *vs.* N. E. ¼–27–31–3 W. defendant. Date of judgment Nov. 10, 1891. Amount $— Interest $— Costs of increase $— M. J. Sweeley & S. Draper, plaintiff's attorneys. Received Dec. 1st 3 p. m. A. D. 1891 John Dolphin sheriff, Returned and filed January 5th, 1892. A. L. Jones clerk. Exhibit H. 846. Copy. Sheriff's sale. The Farmers Loan and Trust Company plaintiff *vs.* Henry A. Root and The North-east Quarter of Section Twenty-seven (27), Township Thirty-one (31) Range (3) West of the 6th Principle Meridian in Knox County, Nebraska and The Unknown Owners Thereof, defendants.

By virtue of an order of sale directed to me from A. L. Jones the clerk of district — of Knox county Nebraska on a judgment obtained before the Hon. Isaac Powers Jr. judge of the ninth (9) judicial district of Knox county Nebraska, on the 10th day of November 1891 upon a decree of foreclosure of tax lien in favor of the Farmers Loan and Trust Company, plaintiff and against Henry A.
134 Root and The North-east Quarter of Section Twenty-seven (27) Township Thirty-one (31) North of Range Three (3) West and The Unknown Owners Thereof: defendants for the sum of seventy-seven dollars and fort*h*-seven cents ($77.47) and costs taxed at twenty-three dollars and eighty-three cents ($23.83) and seven dollars and seventy-five cents ($7.75) attorneys' fees, and accruing costs I have levied upon the following described real estate taken as the property of said defendants to satisfy said decree of foreclosure of tax lien to-wit: The north-east quarter of section twenty-seven (27) township thirty-one (31) north range of three (3) west of the sixth (6th) principal meridian in Knox county Nebraska. I have caused said land to be appraised according to law and will offer the same for sale to the highest bidder for cash in hand on the 4th day of January A. D. 1892, in front of the Grand Army of the Republic hall, in Niobrara Nebraska that being the building wherein the last term of court was held, to satisfy said order of sale, at the hour

of one o'clock p. m. of said day when and where due attendance will be given by the undersigned.

Dated at Niobrara Nebraska, this 1st day of December 1891.

JOHN DOLPHIN,
Sheriff of said County.

Publisher's Affidavit.

THE STATE OF NEBRASKA, } ss:
Knox County, }

I, Ed. A. Fry being first duly sworn, deposes and says that I am the publisher of the Niobrara Pioneer, a weekly newspaper of general circulation printed and published in said county and that the annexed notice was published in the original body of said paper for five consecutive weeks the first publication being in the
135 regular issue of December 4–1891, and ending with January 1, 1892, and further I saith not.

ED. A. FRY.

Subscribed in my presence and sworn to before me on this 4th day of January, A. D. 1892.

[SEAL.] A. L. JONES, *Clerk D. C.*

Office of clerk of the district court, Niobrara, Neb., —— 189–.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original notice of sheriff sale and publisher's affidavit in case No. 846, wherein Farmers Loan and Trust Co. was plaintiff and Henry A. Root and N. E. ¼ of Sec. 27–Twp. 31 Range 3 W. 6th P. M., now on file in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 11th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Endorsed: Exhibit "I" Rec'd payment Ed A. Fry.

EXHIBIT "J."

Return to Order of Sale.

Copy.

STATE OF NEBRASKA, } ss:
Knox County, }

Received this order, this first day of December 1891, at 3 o'clock p. m. and according to the command thereof, I summoned S. Saunders and Wm. C. Miller two disinterested residents and freeholders

of said county, and administered to them an oath impartially to appraise the interest of Henry A. Root and all unknown owners.

136 Defendant in said lands and tenements, upon actual view thereof, and I, together with said S. Saunders and Wm. C. Miller made an appraisement in writing of said lands and tenements, which appraisement is herewith returned, a copy of which I forthwith deposited with the clerk of the district court of said county, together with the certificate of the county clerk, clerk of the district court, and treasurer of said county, and thereupon on the first day of December 1891, I caused a notice to be published in the Niobrara Pioneer a newspaper printed and in general circulation in said county, that I would offer said lands for sale at the front door of the Grand Army of the Republic hall, in Niobrara, Knox county, Nebraska, that being the building wherein the last term of the district court of said county was held, on the fourth day of January A. D. 1892, at one o'clock, p. m. of said day, after having so advertised the same for more than thirty days, and at the time and place stated in said notice, I offered the said lands and tenements for sale at public auction, and sold the same as follows, to-wit:

The north-east quarter of section twenty-seven (27) in township thirty-one (31) range (3) west of the 6th P. M. in Knox county, Nebraska; I first offered said land in 40 acre tracts and could find no bidders therefor and deeming it to the best interest of all parties concerned that said premises should be sold I offered the same for sale in one body and sold the same to H. S. Green of Crawford county, State of Iowa, for the sum of four hundred ninety- & no/100 dollars ($490.00), he being the highest bidder therefor, and that sum being not less than two thirds of the appraised value thereof.

Amount of principal, $77.47, amount of interest $3.45, att'y's fee $7.75, principal and interest, $88.67 Amount of proceeds of sale $490.00 Costs of court, $23.83 Costs of sale, $38.25.

137 Total costs, $62.08, applicable upon judgment, $88.67, amount of surplus, $339.25.

Given under my hand this 5th day of January, A. D. 1892.

JOHN DOLPHIN,
Sheriff of Knox County.

Recd. payment.

Items of Sheriff's Cost.

Certificates of county treasurer, county clerk and clerk of district court	$6.75
Making levy	1.10
Calling appraisers	.50
Swearing "	1.50
Fees of "	2.00
Copy of appraisements	.50
Advertisement of sale	.50
Cost of publication	15.00
Making sale	1.00
Commission on sale	5.00

Return on sale	1.00
Making deed	1.00
Acknowledging deed	.50
Mileage	3.00
Total costs of sale	38.25

Office of the clerk of district court, Niobrara, Neb., —— 189–.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Haris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original return to order of sale in case No. 846 wherein Farmers Loan and Trust Co. was plaintiff and Henry A. Root and N. E. ¼ of Sec. 27–Twp. 31–Range 3 W. 6th P. M., — now on
138 file in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 11th day of July A. D. 1896.

R. H. HARRIS,
[SEAL.] *Clerk of the District Court in and for Knox County, Neb.*

Endorsed: Return to order of sale. Doc. — No. 846 page — Farmers Loan & Trust Co plaintiff, *vs.* N. E. ¼–27–31–3 W. Defendant returned and filed: —— 18 — Exhibit "J"

EXHIBIT "10."

Case No. 843.

Know all men by these presents: That whereas, Farmers Loan and Trust Company did by virtue of the judgment of the district court of the 9th judicial district of the State of Nebraska, within and for the county of Knox at the November term thereof, A. D. 1891, recover a judgment against Henry A. Root and N. W. ¼ sec. 27 twp. 31 range 3 west for the sum of ninety-six dollars and *for* sixty-five cents and costs of suit, taxed at twenty-three dollars eighty-three cents: and nine — 68 cents *dollars* attorneys' fees, and whereas it was then and there further ordered in the said action that in default of the payment of the judgment aforesaid, by the said Henry A. Root and N. W. ¼ sec. 27 twp. 31 range 3 west that the sheriff of Knox county, Nebraska should cause the lands tenements hereinafter described to be appraised advertised and sold according to law; and whereas the said Henry A. Root and N. W. ¼ sec. 27 twp. 31 3 west having made default therein, the said sheriff of Knox county, Nebraska, under and by virtue of the order of the same to him duly directed, did, on the 2nd day of January A. D. 1891 at 11 a. m. of said day at the front door of the G. A. R. hall in Niobrara, Knox county, Nebraska, that being the building in which the last

term of the district court of said county was held in said
139 county of Knox (having first given due and legal notice of the time and place of said sale, for not less than thirty days prior thereto, in the Ni-brata Tribune, a newspaper printed and in general circulation in said county of Knox sell the said premises at public auction to H. S. Green of Crawford county, State of Iowa for the sum of four hundred and ninety dollars, which sale was afterwards, at the April term of said court, A. D. 1892 examined and confirmed, and the said sheriff of Knox county Nebraska as such sheriff of Knox county, Nebraska ordered to convey the said premises in fee simple to the said H. S. Green of Crawford county, State of Iowa.

Now, therefore, I, the said Charles Crockett, sheriff of Knox county, Nebraska as aforesaid, in consideration of the premises, and by virtue of the powers vested in me by law, do hereby give, grant, and convey to the said H. S. Green of Crawford county, State of Iowa his heirs and assigns, the premises so as aforesaid sold, to-wit: the north-west quarter (N. W. ¼) of sec. twenty-seven (27) in township thirty-one (31) range three (3) west of the sixth (6th) principal meridian in Knox county, Nebraska, subject to prior liens as shown by the records in the county clerk's office, county treasurer's office and clerk of the district court's office, with appurtenances.

To have and to hold the same to the said H. S. Green of Crawford county, State of Iowa, his heirs and assigns, and to them and their use and behoof forever.

In testimony whereof, I have as such sheriff of Knox Co. Nebraska, hereunto set my hand this 16th day of May, A. D. 1892.

CHARLES CROCKETT,
Sheriff Knox County, Nebraska.

Executed and delivered in presence—

FRANK LUNDAK.
W. M. McCLINTOCK.

THE STATE OF NEBRASKA, } ss:
Knox County, }

140 Personally appeared before me, the undersigned, clerk of the district court of said Knox county, the said Charles Crockett sheriff of said county, and acknowledged the foregoing instrument of writing, for the purposes therein set forth, to be his free act and deed. Given under my hand and seal, this seventeenth day of May, A. D. 1892.

[SEAL.]

J. T. LINDSAY, JR.,
Clerk of the District Court.

Endorsed on back of deed: Deed. Charles Crockett, sheriff, to H. S. Green. Dated —.

THE STATE OF NEBRASKA, } ss:
Knox County, }

Entered on numerical index and filed for record Feb'y 23, 1894 at 9 o'clock — minutes a. m. and recorded in the office of the clerk of said county, in Book M of Deeds, on page "178."

CHAS. VAN CAMP,
County Clerk.

EXHIBIT "11."

In the District Court of the State of Nebraska in and for Knox County.

THE FARMERS LOAN AND TRUST COMPANY, Plaintiff,
vs.
HENRY A. ROOT and THE NORTHWEST Quarter of Section 27, Township 31, Range 3 West, 6th P. M., Defendant-. } Petition in Chancery.

The plaintiff states:

Paragraph 1. That it is a corporation duly and legally incorporated under the laws of the State of Iowa and doing business in said State and the State of Nebraska.

Par. 2. That included in the powers of said corporation
141 is the right to invest in tax sale certificates and to buy own and control real estate.

Par. 3. That on the 13th day of June 1888 at a regular private tax sale, held in and for the county of Knox in the State of Nebraska, the plaintiff purchased for the taxes then due thereon the following described real estate situated in said county to-wit: The north-west quarter of section No. twenty-seven (27) in townships No. thirty-one (31) of range No. three (3) west sixth P. M.

Par. 4. That at said time the plaintiff paid to the county treasurer of said county the amount of taxes due on said land to-wit: The sum of twenty-four & 50/100 dollars and received from said county treasurer a certificate of such purchase.

Par. 5. That thereafter under and by virtue of said tax sale and tax certificate the plaintiff paid subsequent taxes on said land as follows: On the 10th day of August 1888 the sum of twenty-one & 79/100 dollars on the 9th day of July 1889 the sum of nineteen & 63/100 dollars.

Par. 6. That thereafter and not less than three months nor more than five months before the expiration of two years from the time of such tax sale to-wit on or about the — day of —— 1890 the plaintiff caused to be served on every person in actual possession of such land, and the person in whose name was taxed a notice stating when plaintiff purchased such land, in whose name, in whose name taxed, the description of the land purchased, for what year taxed

and when the time of redemption would expire, as required by section 123 chapter 77 of the Statutes of Nebraska and made proof by affidavit to the county treasurer of said county of the compliance with said statute;

Par. 7 That after the making of said proof and upon the compliance with all the provisions of the statute relating thereto
142 and at the expiration of the time of redemption from such sale to-wit on or about the 25th day of September 1890 the county treasurer of said Knox county, Nebraska, executed and delivered to the plaintiff a deed conveying to the said plaintiff the land hereinbefore described.

Par. 8. That in serving the notice mentioned in paragraph 6 hereof the plaintiff has incurred and paid actual and legal costs in the sum of five dollars.

Par. 9. That it is informed and believes and therefore charges the fact to be that the owner of said land is not known and that the defendant Henry A. Root has or claims some interest therein.

Therefore plaintiff prays that it- lien for said amounts of taxes so paid by it with interest thereon at the rate provided by statute from the several times of payment, be fully established and decreed to be the first and paramount lien upon said land that the plaintiff be allowed an attorney's fee equal to ten per cent. of the amount of such decree, and costs of suit that said lien be foreclosed and said land be ordered sold to satisfy the full amount of said decree with interest, attorney's fees and costs of serving notice of the exporation of the time of redemption, and accruing costs, that the sheriff or any other person making said sale be ordered to put the purchaser then under in possession of said premises that the deed issued under said sale be and absolute bar against each and all persons claiming under such defendants and against all other persons and for such other and further relief as may be deemed equitable in the premises.

M. J. SWEELEY,
Attorney for the Plaintiff.

STATE OF IOWA, }
Woodbury County, } ss:

143 I, James F. Toy being duly sworn do state that I am treasurer of The Farmers Loan & Trust Company the plaintiff above named that said plaintiff is a corporation, that I have read the foregoing petition and know its contents, that the statements therein contained are true as I verily believe.

[SEAL.] JAMES F. TOY, JR.

Subscribed in my presence and sworn to before me this 28th day of September, A. D. 1891

L. GREENWOOD,
Notary Public.

Office of clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above and foregoing is a true copy of the original petition in case No. 843, Farmers Loan & Trust Company *vs.* Henry A. Root and N. W. ¼ of Section 27, Twp. 31 R'ge 3 West Knox County Nebraska in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Endorsed: Copy 843 Farmers Loan & Trust Co. *vs.* Henry A. Root. & N. W. 4–27–31–3 Petition in chancery. The State of Nebraska, Knox county, *ss.* Filed this 30th day of September A. D. 1891 A. L. Jones, clerk of the dist. court.

144 EXHIBIT "12."

Order of Sale.

THE STATE OF NEBRASKA, } ss:
Knox County, }

The State of Nebraska to the sheriff of said county:

In the district court within and for the county of Knox and State of Nebraska, in a certain action in the district court pending, wherein Farmers Loan & Trust Company — plaintiff and Henry A. Root and N. W. ¼ Sec. 27, Tp. 31 R. 3 W. defendant-.

You are hereby commanded to appraise, advertise, and sell according to law the following described premises, to wit: The north-west quarter of section twenty-seven (27) township thirty-one (31), range three (3) west of the 6th P. M. in Knox county, Nebraska to satisfy a judgment obtained in our said court at the November A. D. 1891, term thereof, to wit on the 10th day of November A. D. 1891, wherein the said Farmers Loan & Trust Company recovered of the said Henry A. Root and N. W. ¼ sec. 27, tp. 31 range 3 west on the consideration of our said court the sum of ninety-six dollars and sixty-five cents, and his costs taxed at twenty-three dollars and eighty-three cents, and nine & $\frac{66}{100}$ dollars attorneys' fee, and of your proceedings therein you report to our said court on the first day of the next term thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of our said district court at Niobrara Nebraska, this 1st day of Dec. A. D. 1891.

[SEAL.] A. L. JONES, *Clerk.*

12—422

Office of clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a
145 true copy of the original order of sale in case No. 843 in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July, A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Endorsed: Order of sale. — court. Doc. 2, No. 843, page 117. Farmers Loan & Trust Company, plaintiff *vs.* N. W. ¼ 27-31-3-W. defendant Date of judgment Nov. 10, 1891. Amount $— Interest.?.$— Costs of increase $— M. J. Sweeley & S. Draper, plaintiff's attorney-. Received Dec. 1st 2 p. m. A. D. 1891 John Dolphin sheriff. Returned and filed January 5, 1892. A. L. Jones, clerk.

THE STATE OF NEBRASKA, } ss:
Knox County, }

We, S. Saunders and Wm. C. Miller, two disinterested freeholders and residents of Knox county were by the sheriff of said county called on an inquest to appraise the interest of Henry A. Root and N. W. ¼ sec. 27, twp. 31, range 3 W. in the following lands and tenements, to-wit the north-west quarter of section twenty-seven (27) township thirty-one (31) range three (3) west of the 6th P. M. in Knox county Nebraska, levied upon by said sheriff as the property of above defendants, on an order of sale in favor of Farmers Loan & Trust Company and against said defendants and having taken the oath required by law, do with said sheriff appraise the same as follows:

Gross value of said lands and tenements	$800.00
Taxes, as per county treasurer's certificate	$66.39
Mechanic's liens, as per county clerk's certificate	
Judgements, as per clerk of district court's certificate	
Which deducted from the gross value of said real estate leaves	$733.61

146 which we appraise as the real value in money of the interest of above defendants in said lands and tenements.

Dated this 3rd day of December, 1891.

S. SAUNDERS.
WM. C. MILLER.
JOHN DOLPHIN, *Sheriff.*

I hereby certify that the above named S. Saunders and Wm. C. Miller are freeholders and residents of said Knox county and that they were by me duly summoned and sworn to make the appraisement as above set forth on the day and year last above written.

JOHN DOLPHIN, *Sheriff.*

Office of clerk of the district court, Niobrara, Neb., July 8th, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original appraisal in case No. 843, in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

FARMERS LOAN AND TRUST COMPANY
vs.
THE NORTHWEST QUARTER OF SECTION TWENTY-SEVEN, Township Thirty-one, Range Three West, of the Sixth Principal Meridian, in Knox County, State of Nebraska.

By virtue of a- order of sale directed to me from the district court of Knox county Nebraska on a judgment of foreclosure obtained before Isaac Powers Jr. judge of the 9th judicial district *and* in
147 and for Knox county State of Nebraska on the tenth day of November 1891 on foreclosure of a tax lien in favor of the Farmers Loan and Trust Company as plaintiff and against Henry A. Root and the North-east Quarter of Section Twenty-seven Township Thirty-one Range Three West of the Sixth Principal Meridian as defendants for the sum of ninety-six dollars and sixty-five cents and costs taxed at thirty-three dollars and forty-nine cents and accruing costs. I have levied upon the following described lands taken as the property of said defendants to satisfy a tax lien to-wit: Th- north-west quarter of section twenty-seven township thirty-one range three west of the sixth principal meridian in Knox county Nebraska and will offer the same for sale to the highest bidder for cash in hand on the second day of January A. D. 1892 in front of the Grand Army of the Republic hall at Niobrara Knox county Nebraska, that being the building wherein the last term of district court was held at the hour of eleven o'clock a. m. of said day when and where due attendance will be given by the undersigned. Dated at Niobrara, this second day of December, 1891.

JOHN DOLPHIN,
Sheriff of Knox County.

Office of clerk of the district court, Niobrara, Neb., July 8th, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska do hereby certify that the above — foregoing is a true copy of the original notice of sheriff's sale in case No. 843 and publisher's affidavit in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

148 Copy.

Affidavit of Publication.

STATE OF NEBRASKA, } ss:
Knox County, }

E. G. Miller being first duly sworn deposes and says, that he is publisher of the Niobrara Tribune and has knowledge of the facts herein stated that said paper is a newspaper printed and published and of general circulation in said county. That the notice a true and correct copy of which is attached hereto, was published in said newspaper in each weekly issue thereof for 5 consecutive weeks the first publication being upon the 2nd day of December 1891 inclusive.

[SEAL.] E. G. MILLER.

Subscribed and sworn to before me and in my presence, at Niobrara this 2nd day of January, 1892.

A. L. JONES,
Clerk of Dist. Court in and for Knox County, Neb.

Rec'd payment.

Copy.

Application of Sheriff to County Clerk, Clerk of the District Court, and County Treasurer. 843.

To G. G. Bayha, county treasurer:

You are hereby required to certify under your hand and official seal, the amount and character of all liens existing against the following described land to wit: N. W. ¼, sec. 27, tp. 31, R. 3 W. On the 2 day of Dec. 1891 as they appear of record in your office.

Dated this 2 day of Dec. 1891.

JOHN DOLPHIN, *Sheriff.*

The following liens appear of record in this office against the N. W. ¼ sec. 27 twp. 31 range 3 west of the 6th P. M. in Knox Co. Neb. to-wit: Sold for the taxes of 1889, Subsequent taxes of 1890 paid by purchaser.

Amount to redeem $51.05
Taxes for 1891 due and unpaid..... 15.34

Sold at private sale for the taxes of 1880/82, Feb'y 3/87.

149 Am't sold for..... $54.72

Sold at private sale for taxes 83/85 May 28/87.

Amount sold for..... $50.58

Office of clerk of the district court, Niobrara, Neb., July —, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original certificate of the county treasurer of Knox county Neb. in case No. 843. in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

I, Geo. G. Bayha treas. of Knox county hereby certify that I have correctly stated above the amount and character of all liens existing against the above described lands and tenements and also all incumbrances thereon which appear of record in my office, on the 2nd day of Dec. 1891.

In witness whereof, I have hereunto set my hand and affixed my official seal this 2 day of Dec. 1891.

[SEAL.] GEO. G. BAYHA, *Co. Treas.*

Endorsed: The State of Nebraska, Knox county, ss. Filed this 3rd day of Dec. A. D. 1891 A. L. Jones clerk of the dist. court.

Application of Sheriff to County Clerk, Clerk of the District Court and County Treasurer.

To A. L. Jones, clerk dist. court:

150 You are hereby required to *to* certify under your hand and official seal, the amount and character of all liens existing against the following described land to-wit: N. W. ¼ sec. 27 tp. 31 R. 3 W.

On the 2 day of Dec. 1891 as they appear of record in your office. Dated this 2 day of Dec. 1891.

JOHN DOLPHIN, *Sheriff.*

The following liens appear of record in this office against the above described land to-wit Decree of foreclosure in favor of Farmers Loan & Trust Co. Amount of judgment $96.65 Costs $23.83 Att'y fees $9.66.

I, A. L. Jones clerk dist. court of Knox county hereby certify that I have correctly stated above the amount and character of all liens existing against the above described lands and tenements, and also all incumbrances thereon which appear of record in my office on the 2 day of Dec. 1891.

In witness whereof, I have hereunto set my hand and affixed my official seal this 2 day of Dec. 1891.

[SEAL.] A. L. JONES, *Clerk.*

Office of clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original certificate of the clerk of the district court of Knox county Nebr., in case No. 843 in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

151 Copy.

Application of Sheriff to County Clerk, Clerk of the District —, and County Treasurer. 843.

To F. Nelson, county clerk:

You are hereby required to certify, under your hand and official seal, the amount and character of all liens existing against the following described land, to-wit N. W. ¼ sec. 27 tp. 31 R. 3 W. On the 2 day of Dec. 1891 as they appear of record in your office. Dated this 2 day of Dec. 1891.

JOHN DOLPHIN, *Sheriff.*

The following liens appear of record in this office against the above described land to-wit: No incumbrance.

I, F. Nelson Co. cl'k of Knox county hereby certify that I have correctly stated above the amount and character of all liens existing against the above described lands and tenements, and also all incumbrances thereon which appear of record in my office, on the 2 day of Dec. 1891.

In witness whereof, I have hereunto set my hand and affixed my official seal this 2 day of Dec. 1891.

[SEAL.] F. NELSON, *Co. Cl'k.*

Office of clerk of the district court, Niobrara, Neb., July 8th, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original certificate of the county clerk of Knox county Neb. in case No. 843. in my office and all endorsements thereon.

Witness my hand — the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

152 (Copy.)

Return to Order of Sale. 843.

STATE OF NEBRASKA, } ss:
Knox County, }

Received this order this 1st day of December 1891 at 2 o'clock p. m. and according to the command thereof, I summoned S. Saunders and W. C. Miller two disinterested residents and freeholders of said county, and administered to them an oath impartially to appraise the interest of Henry A. Root and N. W. ¼ 27–31–3–W. defendant- in said lands and tenements, upon actual view thereof, and I together with said appraisers made an appraisement in writing of said lands and tenements, which appraisement is herewith returned, a copy of which I forthwith deposited with the clerk of the district court of said county together with the certificate of the county clerk, clerk of the district court and treasurer of said county, and thereupon on the 2nd day of December 1891 I caused a notice to be published in the Niobrara Tribune a newspaper printed and in general circulation in said county, that I would offer said lands for sale at the front door of the Grand Army of the Republic hall, in Niobrara, Knox county, Nebraska, that being the building wherein the last term of the district court of said county was held, on the 2nd day of January A. D. 1892 at 11 o'clock a. m. of said day, after having so advertised the same for more than thirty days, and at the time and place stated in said notice I offered the said lands and tenements for sale at public auction, and sold the same as follows to wit:

The N. W. ¼ of section 27–town, 31 range 3 west of the 6th P. M. Knox county, Nebraska. I first offered said land for sale in 40 acre tracts and could find no bidder therefor and deeming it to the best interest of all parties concerned that said land should be
153 sold I offered the same in one body and sold the same to H. S. Green of Crawford county Iowa for the sum of four hundred & ninety ($490.00) dollars and — cents he being the highest bidder therefor, and that sum being not less than two-thirds of the appraised value thereof. Amount of principal $96.65 amount of interest $4.27 att'ys' fees $9.66 att'ys' fee, principal and interest,

$110.58 amount of proceeds of sale, $490.00 costs of court $23.83 costs of sale, $44.95 total costs $68.78 applicable upon judgment, $110.58 amount of surplus $310.64 Given under my hand, this 2nd day of January A. D. 1892.

Received payment.

JOHN DOLPHIN,
Sheriff of Knox Co.

Items of Sheriff's Costs.

Certificates of county treasurer, county clerk and clerk of district court	$6.75
Making levy	1.00
Calling appraisers	.50
Swearing "	.50
Fees of "	2.00
Copy of appraisements	.50
Advertisements of sale	.50
Cost of publication	12.00
Making sale	1.00
Commission on sale	14.70
Return on sale	1.00
Making deed	1.00
Acknowledging deed	.50
Mileage	3.00
Total costs of sale	44.95

154 Office of clerk of the district court, Niobrara, Neb., July 8th, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original sheriff return to order of sale in case No. 843, in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.]

R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Endorsed: Exhibit 12, O. A. W.

Copy. 843.

EXHIBIT 13, O. A. W.

Legal Notice.

THE FARMERS LOAN AND TRUST COMPANY, Plaintiff,
vs.
HENRY A. ROOT and NORTHWEST QUARTER OF SECTION TWENTY-seven (27), Township Thirty-one (31), Range Three (3) West, of the 6th Principal Meridian, Defendants.

THE STATE OF NEBRASKA, }
Knox County, }

To the above named defendants and all persons interested in said real estate:

You are hereby notified that the petition of plaintiff is now on file in the district court of Knox county Nebraska, wherein plaintiff claims that it purchased said real estate for taxes due thereon in the sum of twenty-four dollars and fifty-one cents, at the tax sale held in said county on the 13th day of June 1888, that under said sale it has paid subsequent taxes on said land as follows to-wit, on the 10th of August, 1888 twenty-one dollars and seventy-nine cents and on the 9th day of July 1899 nineteen dollars and sixty-three — for which sums with interest as provided by statute plaintiff claims the first lien against said premises and asks the
155 foreclosure thereof and that the said property be sold to satisfy the amount due plaintiff together with the further sum of ten per cent. of said amount as attorneys' fees and costs of suit and you are further notified to appear and answer said petition on or before Monday the 9th day of November 1891 or the petition will be taken as true and judgment rendered accordingly Dated this 30th day of September 1891.

FARMERS LOAN AND TRUST COMPANY,
By M. J. SWEELEY, *It- Attorney.*

Publisher's Affidavit.

STATE OF NEBRASKA, } *ss:*
Knox County, }

I, Ed A. Fry being first duly sworn, depose and say that I am the publisher of the Niobrara Pioneer, a weekly newspaper of general circulation printed and published in said county and that the annexed notice was published in the original body of said paper for four consecutive weeks the first publication being in the regular issue of October 2–1891, and ending with the regular issue of October 23 1891, and further I saith not.

ED A. FRY.

Subscribed in my presence and sworn to before me on this 9th day of November, A. D. 1891.

[SEAL.] W. WESTERMAN,
Notary Public.

Office of clerk of the district court, Niobrara, Neb., July 8th, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above— foregoing is a true copy of the original legal notice & publisher's affidavit in case No. 843 in my office, and all endorsements thereon.

156 Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

843 EXHIBIT "14."

In the District Court of Knox County, Nebraska.

THE FARMERS LOAN AND TRUST COMPANY
vs.
HENRY A. ROOT and N. W. ¼ SEC. 27, Township 31, Range 3 West, 6th P. M.
} Affidavit for Publication of Notice.

STATE OF IOWA, } ss:
Woodbury County, }

I, M. J. Sweeley being sworn do state that I am the attorney for the plaintiff above named that this case is one of those mentioned in section 77, title V of Code of Civil Procedure of the State of Nebraska and is an action relating to real property in said State in which the defendants have or claim a lien or interest actual or contingent and the relief demanded consists wholly or partially in excluding the defendants from any interest therein, that the defendant Henry A. Root is a non-resident of said State of Nebraska and that service of summons cannot be made on him within said State, I further state that the owner of the real estate involved in said action and described above is not known all of which I verily believe to be true.

M. J. SWEELEY.

Subscribed and sworn to before me this 28th day of September 1891.

[SEAL.] L. GREENWOOD,
Notary Public.

157 Office of the district court, Niobrara, Neb., July 8th, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original affidavit for service by publication on Henry A. Root in case No. 843, wherein The Farmers Loan & Trust Co. are plaintiffs & Henry A. Root & The N. E. ¼ 27-31-3 W. Knox Co. Neb. are def'ts in my office and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July, 1896 A. D.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Endorsed: Exhibit 14 O. A. W. Copy. Farmers Loan & Trust Co. *v.* Henry A. Root & N. W. ¼ 27-31-3 Affidavit. The State of Nebraska, Knox county, *ss.* Filed this 30th day of September A. D. 1891 A. L. Jones clerk of the dist. court.

EXHIBIT "K."

Decree of Foreclosure.

FARMERS LOAN & TRUST COMPANY, Plaintiff,
vs.
HENRY A. ROOT and N. W. ¼ SECTION 27, TOWNSHIP 31, RANGE 3 West, Defendant-.

At a session of the district court of the State of Neb. in and for Knox county, holden at Niobrara, in said county, on the tenth day of November, 1891, the Honorable Isaac Powers, Jr. being present and presiding in said court, the following among other proceedings were had and done, to-wit:

Be it remembered, that on this tenth day of November,
158 1891, this cause came on to be heard before the court the plaintiff appearing by M. J. Sweeley and S. Draper its attorneys, the defendants not appearing in person or by attorney and failing to appear plea- or answer, the plaintiff demands a default against the defendants Henry A. Root and The North-west Quarter of Section Twenty-seven, Township 31 Range 3 West of the 6th P. M. in Knox County, Nebr. for want of appearance, plea, or answer and also that a decree be entered in this cause against the defendants as prayed for in the petition. The court finds that due and legal notice of the filing and pendency of this action was given the said defendants, and that they have failed to appear and plead in said cause in the time and manner provided for by law; and said defendants being three times solemnly called in open court, and still failing to answer, demur or otherwis*e* plead, are adjudged to be in default. A default i*n* therefore hereby entered against the

defendants, and each of them viz: Henry A. Root and North-west Quarter of Section Twenty-seven Township 31 Range 3 West of the 6th P. M. in Knox County, Nebr. said cause having been duly submitted to the court, upon the pleadings and evidence, and the court having fully considered the same, the court finds that the plaintiff purchased at a legal tax sale held in said county of Knox and State of Nebraska on the — day of —— 188– for the taxes due thereon the following described real estate situated in the county of Knox and State of Nebraska, to-wit: the north-west quarter of section twenty-seven, township 31 range 3 west of the 6th P. M. in Knox county, Nebr., and that said taxes are a first lien on said described land, and paramount and superior to any right, title, lien, or interest in, to or against the same of any of the defendants in this action or any other *other* person. The court also finds that the plaintiff is
159 the owner of the tax certificate of sale, as set forth in plaintiff's petition, and that said plaintiff is entitled to a decree foreclosing lien for the amount due upon said taxes. The court also finds that there is due the plaintiff upon the tax sale and payments set forth in the petition, the sum of $96.65 together with the sum of $9.60 att'ys' fees as is provided by statute.

It is therefore considered, adjudged, and decreed by the court, that in case the defendants fail for twenty days from the entry of this decree to pay or cause to be paid to the plaintiff the sum of $106.31 so found due, with interest thereon at the rate of ten per cent. per annum from the date hereof together with the costs of this action taxed at $23.83, that the defendants be foreclosed of all equity of redemption, or *either* interests in said premises; that said premises be sold and an order of sale shall be issued to the sheriff of Knox county, Nebraska, commanding him to sell the above described premises, as upon execution, and bring the proceeds thereof into court, to be applied in satisfaction of the *same* so found due, in the order of their priority, as above found, and costs upon the confirmation of said sale.

—— ——,
Judge of the District Court.

EXHIBIT "L."

In the District Court of Knox County, Nebraska.

THE FARMERS LOAN & TRUST COMPANY }
vs. }
—— ——. }

The following decree of confirmation includes all the following cases, No. 804, 806, 809, 813, 814, 819, 820, 821, 825, 828, 827, 833, 835, 837, 843, 846, 851.

Be it remembered that on the 23rd day of April, 1892.
160 the same being the 5th judicial day of the regular April 1892 term of this court this cause coming on for final hearing on

the sale of real estate heretofore to-wit, on the — day of January, 1892, made by John Dolphin, sheriff, pursuant to the decree and order of sale herein the court therefore having carefully examined the proceedings of said officer under such order of sale finds that all of such proceedings are regular and valid and is satisfied of the legality of such sale and that the same has been in all respects made in conformity to law and particularly to the provisions of title fourteen of the Code of Civil Procedure of the State of Nebraska. It is therefore ordered, adjudged and decreed by the court that said sale be and the same is hereby approved and confirmed and the sheriff of said county of Knox, Nebraska is ordered to execute to the purchaser of said land a deed thereto and the clerk of this court is directed to make this entry upon the journal of this court.

Recorded on Journal 3 at page 140 records of Knox Co., Neb.

EXHIBIT "15."

Know all men by these presents: That whereas, Farmers Loan and Trust Company did, by virtue of the judgment of the district court of the 9th judicial district of the State of Nebraska, within and for the county of Knox at the November term thereof, A. D. 1891, recover a judgment against Henry A. Root and N. W. ¼ of sec. 22 twp. 31 range 3 west for the sum of ninety-six dollars and *for* sixty-five cents and costs of suit, taxed at twenty-three dollars eighty-three cents: and — dollars attorneys' fees, and whereas, it was then and there further ordered in the said action that in default of the payment of the judgment aforesaid, by the said Henry A. Root and N. W. ¼ of sec. 22 twp. 31 range 3 west that the sheriff of Knox county, Nebraska should cause the lands and tenements hereinafter described to be appraised advertised and sold according to law; and whereas the said Henry A. Root and N. W. ¼ sec. 22 twp. 31 range 3 west having made default therein, the said sheriff of Knox county, Nebraska, under and by virtue of the order of the same to him duly directed, did, on the 2nd day of January A. D. 1891, at 11 a. m. of said day at the front door of the G. A. R. hall in Niobrara, Knox county, Nebraska, that being the building in which the last term of the district court of said county was held in said county of Knox (having first given due and legal notice of the time and place of said sale, for not less than thirty days prior thereto, in the Niobrara Tribune, a newspaper printed and in general circulation in said county of Knox sell the said premises at public auction to H. S. Green of Crawford county, State of Iowa for the sum of four hundred and fifteen dollars, which sale was afterwards, at the April term of said court, A. D. 1892 examined and confirmed, and the said sheriff of Knox county Nebraska as such sheriff of Knox county, Nebraska ordered to convey the said premises in fee simple to the said H. S. Green of Crawford county, State of Iowa.

161

Now, therefore, I, the said Charles Crockett, sheriff of Knox county, Nebraska as aforesaid, in consideration of the premises, and by virtue of the powers vested in me by law, do hereby give, grant,

and convey to the said H. S. Green of Crawford county, State of Iowa his heirs and assigns, the premises so as aforesaid, to-wit: the north west quarter of section twenty-two, in township thirty-one (31) range three (3) west of the sixth (6th) principal meridian in Knox county, Nebraska, subject to prior liens as shown by the records in the county clerk's office, county treasurer's office and clerk of the district court's office, with appurtenances.

To have and to hold the same to the said H. S. Green of Crawford county, State of Iowa, his heirs and assigns, and to them
162 and their use and behoof forever.

In testimony whereof, I have as such sheriff of Knox county, Nebraska, hereunto set my hand this 16th day of May, A. D. 1892.

CHARLES CROCKETT,
Sheriff of Knox County, Nebraska.

Executed and delivered in presence of—

FRANK LUNDAK.
W. M. McCLINTOCK.

STATE OF NEBRASKA, } ss:
Knox County, }

Personally appeared before me, the undersigned, clerk of the district court of said Knox county, the said Charles Crockett sheriff of said county and acknowledged the foregoing instrument of writing, for the purposes therein set forth, to be his free act and deed.

Given under my hand and seal, this seventeenth day of May A. D. 1892.

[SEAL.]

J. T. LINDSEY, JR.,
Clerk of the District Court.

Endorsed on back of deed: Deed. Charles Crockett, sheriff, to H. S. Green. Dated —.

THE STATE OF NEBRASKA, } ss:
Knox County, }

Entered on numerical index and filed for record Feb'y 23, 1894 at 9 o'clock — minutes a. m. and recorded in the office of the clerk of said county, in Book M of Deeds, on page "175."

CHAS. VAN CAMP,
County Clerk.

809 EXHIBIT "16."

In the District Court of the State of Nebraska in and for Knox County.

THE FARMERS' LOAN AND TRUST COMPANY, Plaintiff,
vs.
HENRY A. ROOT and THE NORTH-WEST Quarter of Section 22, Township 31, Range 3 West, 6th P. M., Defendants. } Petition in Chancery.

163 The plaintiff states:

Paragraph 1. That it is a corporation duly and legally incorporated under the laws of the State of Iowa and doing business in said State and the State of Nebraska.

Par. 2. That included in the powers of said corporation is the right to invest in tax sale certificate- and to buy own and control real estate.

Par. 3. That on the 12th day of June 1888 at a regular private tax sale held in and for the county of Knox in the State of Nebraska, the plaintiff purchased for the taxes then due thereon the following described real estate situated in said Co. to-wit: The north-west quarter of section No. twenty-two (22) in township No. thirty-one (31) of range No. three (3) west sixth P. M.

Par. 4. That at said time the plaintiff said to the county treasurer of said county the amount of taxes due on said land to-wit: The sum of twenty-four & 50/100 dollars and received from said county treasurer a certificate of such purchase.

Par. 5. That thereafter under and by virtue of said tax sale and tax certificate the plaintiff paid subsequent taxes on said land as follows: On the 10th day of August 1888 the sum of twenty-one & 79/100 dollars on the 9th day of July 1889 the sum of nineteen & 63/100 dollars.

Par. 6. That thereafter and not less than three months nor more than five months before the expiration of two years from the time of such tax sale to-wit on or about the — day of —— 1890 the plaintiff caused to be served on every person in actual possession of such land the person in whose name the same was taxed a notice stating when plaintiff purchased such land in whose name
164 taxed, the description of the land purchased for what year taxed and when the time of redemption would expire as required by section 123 chapter 77 of the Statutes of Nebraska, and made proof by affidavit to the county treasurer of said county of the compliance with said statute.

Par. 7. That after the making of said proof and upon the compliance with all the provisions of the statutes relating thereto and at the expiration of the time of redemption from such sale to-wit on or about the 25th day of September 1890 the county treasurer of said Knox county Nebraska executed and delivered to

the plaintiff a deed conveying to said plaintiff the land herein before described.

Par. 8. That in serving the notice mentioned in paragraph 6 hereof the plaintiff has incurred and paid actual and legal*ly* costs in the sum of five dollars.

Par. 9. That it is inform*al* and believes and therefore charges the fact to be that the owner of said land is not known and that the defendant Henry A. Root has or claims some interest therein. Wherefor- plaintiff prays that its lien for the said amounts of taxes so paid by it with interest thereon at the rate provided for by statute from the several times of payment be fully established and decreed to be the first and paramount lien upon said land that plaintiff be allowed an attorney fee equal to ten per cent. of the amount of such decree and cost of suit, that said lien be foreclosed and sa*id* land be ordered sold to satisfy the full amount of said decree with interest, attorneys' fees and costs of suit costs of serving notice to the expiration of the time of redemption, and accruing costs, that the sheriff or other person making said sale be ordered to put the purchaser thereunder in possession of said premises that the deed issued under said sale be an absolute bar against each and all of the defendants and any and all persons claiming under such defendant and against all other persons and for such
165 other and further relief as may be deemed equitable in the premises.

M. J. SWEELEY,
Attorney for the Plaintiff.

STATE OF IOWA, }
Woodbury County, } *ss*:

I, James F. Toy being sworn do state that I am treasurer of The Farmers Loan and Trust Company the plaintiff above named that said plaintiff is a corporation that I have read the foregoing petition and know its contents and that the statements therein contained are true as I verily believe.

[SEAL.] JAMES F. TOY, *Tr.*

Subscribed in my presence and sworn to before me the 28th day September, A. D. 1891.

—— GREENWOOD,
Notary Public.

Office of clerk of the district court, Niobrara, Neb., July 8th, 1896.

STATE OF NEBRASKA, }
Knox County, } *ss*:

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original petition in case No. 809–Farmers Loan & Trust Co. *vs.* Henry A. Root & N. W. ¼ Sec. 22–Twp. 31–R'ge 3–west, in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

[SEAL.]

Endorsed: Copy. Farmers Loan & Trust Co. *vs.* Henry A. Root & N. W. ¼ 22-31-3. Petition in chancery. The State of Ne-
166 braska, Knox county, *ss.* Filed this 30th day of September A. D. 1896. A. L. Jones, clerk of the district court. Exhibit 16, O. A. W.

809 EXHIBIT "17."

In the District Court of Knox County, Nebraska.

THE FARMERS LOAN AND TRUST COMPANY *vs.* HENRY A. ROOT and THE NORTHWEST Quarter Section 22, Tp. 31, Range 3 West, 6th P. M. } Affidavit for Publication of Notice.

STATE OF IOWA, *Woodbury County,* } *ss:*

I, M. J. Sweeley being sworn do state that I am the attorney for the plaintiff above named that this case is one of those mentioned in section 77 title V of the Code of Civil Procedure of the State of Nebraska, and is an action relating to real property in said State in which the defendant- have or claim a lien or interest actual or contingent and the relief demanded consists wholly or partially in excluding the defendants from and interest therein that the defendant Henry A. Root is a non-resident of said State of Nebraska and that service of summone cannot be made on him withing said State, I further state that the owner of the real estate involved in said action described above is not known all of which I verily believe to be true.

M. J. SWEELEY.

[SEAL.]

Subscribed and sworn to before me this 28th day of September 1891.

L. GREENWOOD,
Notary Public.

Office of clerk of the district court, Niobrara, Neb., July 8th, 1896.

STATE OF NEBRASKA, *Knox County,* } *ss:*

167 I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska do hereby certify that the above — foregoing is a true copy of the original affidavit for service by publication in

case No. 809 Farmers Loan & Trust Co. *vs.* Henry A. Root & N. W. ¼ Sec. 22–Twp. 31–R'ge 3 west. in my office and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

R. H. HARRIS,
Clerk of the District Court in and for
Knox County, Neb.

Endorsed: Copy. Farmers Loan & Trust Co. *vs.* Henry A. Root & N. W. ¼ 22–31–3. The State of Nebraska, Knox county, *ss.* Filed this 30th day of September A. D. 189–. A. L. Jones, clerk of the dist. court. Exhibit 17.

Copy. 809.

EXHIBIT "18."

Appraisal.

THE STATE OF NEBRASKA, }
Knox County, } *ss:*

We, S. Saunders and Wm. G. Miller, two disinterested freeholders and residents of Knox county were by the sheriff of said county called on an inquest to appraise the interest of Henry A. Root and the N. W. ¼ of section 22, township 31 range 3 west, in the following lands and tenements to-wit: The N. W. ¼ of section 22–township 31 range 3 west of the 6th P. M. Knox county, Nebraska levied upon by said sheriff as the property of above defendants on an order of sale in favor of Farmers Loan & Trust Company and against said defendants, and having taken the oath required by law, do with said sheriff appraise the same as follows:

Gross value of said lands and tenements.....	$800.00
Taxes, as per county treasurer's certificate.....	171.08
Mechanics' liens as per county clerk's certificate.....	
Judgements as per clerk of district court's certificate.....	
Total liens incumbrances.....	$171.08

168 Which deducted from the gross value of said real estate, leaves $628.92. Which we appraise as the real value in money of the interest of the above defendants, in said lands and tenements.

Dated this 3rd day of December, 1891.

S. SAUNDERS.
WM. C. MILLER.
JOHN DOLPHIN, *Sheriff.*

I hereby certify that the above named S. Saunders and Wm. C. Miller are freeholders and residents of said Knox county, and that they were by me duly summoned and sworn to make the appraisement as above set forth, on the day and year last above written.

JOHN DOLPHIN, *Sheriff.*

Office of clerk of the district court, Niobrara, Neb., July 6th, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original appraisal in case No. 809 Farmers Loan & Trust Co. *vs.* Henry A. Root & N. W. ¼ Sec. 22–Twp. 31–Rge. 3 West. in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.]

R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Legal Notice.

In the District Court of Knox County, Nebraska.

THE FARMERS LOAN AND TRUST COMPANY, Plaintiff,
vs.
HENRY A. ROOT and THE NORTH-WEST QUARTER OF SECTION Twenty-two (22), Township Thirty-one (31), Range Three (3) West, of the 6th Principal Meridian, Defendants.

169 The State of Nebraska, Knox county, to the above named defendants and all persons interested in said real estate:

You are hereby notified that the petition of plaintiff is now on file in the district court of Knox county Nebraska wherein plaintiff claims that it purchased said real estate for taxes due thereon in the sum of twenty-four dollars and fifty-one cents at the tax sale held in said county on the 12th day of June 1888, that under said sale it has paid subsequent taxes on said land as follows to-wit: on the 10th day of August 1888, twenty-one dollars and seventy-nine cents and on the 9th day of July 1889 nineteen dollars and sixty-three cents, for which sum with interest as provided by statute plaintiff claims the first lien against said premises and asks the foreclosure thereof and that the said property be sold to satisfy the amount due plaintiff together with the further sum of ten per cent. of said amount as attorney's fees and costs of suit. And you are further notified to appear and answer said petition on or before Monday the 9th day of November, 1891 or the petition will be taken as true and judgment rendered accordingly.

Dated this 30th day of September, 1891.

FARMERS LOAN AND TRUST COMPANY,
By M. J. SWEELEY, *Its Attorney.*

Publisher's Affidavit.

THE STATE OF NEBRASKA, } ss:
Knox County, }

I, Ed. A. Fry being duly sworn depose and say that I am the publisher of the Niobrara Pioneer a weekly newspaper of general circulation printed and published in said county and that the annexed notice was published in the original body of said paper for four consecutive weeks, the first publication being in the regular
170 issue of October 2, 1891. and ending with the regular issue of October 23, 1891. And further I saith not.

ED A. FRY.

Subscribed in my presence and sworn to before me on this 9th day of November A. D. 1891.

H. WESTERMAN,
[SEAL.] *Notary Public.*

Office of clerk of the district court, Niobrara, Neb., July 8th, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original legal notice and publisher's affidavit in case No. 809, Farmers Loan and Trust Co. *vs.* Henry A. Root & N. W. ¼ Sec. 22–Twp.–31–R'ge 3 West, in my office and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

R. H. HARRIS,
[SEAL.] *Clerk of the District Court in and for Knox County, Neb.*

Order of Sale.

THE STATE OF NEBRASKA, } ss:
Knox County, }

The State of Nebraska to the sheriff of said county:

In the district court within and for the county of Knox and State of Nebraska, in a certain action in the district court pending, wherein Farmers Loan & Trust Company — plaintiff, and Henry A. Root and N. W. ¼ Section 22, Township 31, Range 3 West, defendants.

You are hereby commanded to appraise, advertise, and sell according to law, the following described premises, to-wit: The
171 north-west quarter of section twenty-two (22) township thirty-one (31) range three (3) west of the 6th P. M. in Knox county, Nebraska, to satisfy a judgment obtained in our said court at the

November A. D. 1891 term thereof, to-wit: on the 10th day of November A. D. 1891, wherein the said Farmers Loan and Trust Company recovered of the said Henry A. Root and the North-west Quarter of Section 22, Township 31 Range 3 West on the consideration of our said court the sum of ninety-six dollars and sixty-five ($96.65) cents, and his costs taxed at twenty-three dollars and eighty-three cents, and nine & 66/100 dollars attorneys' fee, and of your proceedings therein you report to our said court on the first day of the next term thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of our said district court, at Niobrara Nebraska, this 1st, day of December, A. D. 1891.

[SEAL.] A. L. JONES, *Clerk.*

Office of clerk of the district court, Niobrara, Neb., July 8th, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original order of sale in case No. 809 Farmers Loan & Trust Co. *vs.* Henry A. Root & North-west ¼ Sec. 22–Twp.–31–R'ge 3 West in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] *A.* H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Endorsed: Order of sale District court. Doc. 2 No. 809,
172 page 100. Farmers Loan & Trust Company, plaintiff, *vs.* N. W. ¼ 22–31–3 W. defendant Date of judgment November 10th 1891 M. J. Sweeley & S. Draper plaintiff's attorney-. Received Dec. 1st 10 a. m. A. D. 1891 John Dolphin sheriff. Returned and filed January 5 1892. A. L. Jones clerk.

Copy. 809.

Return to Order of Sale.

STATE OF NEBRASKA, } ss:
Knox County, }

Received this order, this 1st day of December 1891 at 10 o'clock a. m. and according to the command thereof, I summoned S. Saunders and W. C. Miller two disinterested residents and freeholders of said county, and administered to them an oath impartially to appraise the interest of Henry A. Root and N. W. ¼ 22–31–3 W. defendant- in said lands and tenements upon actual view thereof, and I, together with said appraisers made an appraisement in writing of said lands and tenements, which appraisement is herewith

returned, a copy of which I forthwith deposited with the clerk of the district court of said county, together with the certificate of the county clerk, clerk of the district court and treasurer of said county, and thereupon on the 2nd day of December 1891 I caused a notice to be published in the Niobrara Tribune a newspaper printed and in general circulation in said county, that I would offer said lands for sale at the front door of the Grand Army of the Republic hall, in Niobrara, Knox county, Nebraska, that being the building wherein the last terms of the district court of said county was held, on the 2nd day of January A. D. 1892, at 1 o'clock p. m. of said day, after having so advertised the same for more than thirty days, and at the time and place stated in said notice, I offered the said lands and tenements for sale at public auction, and sold the same as follows to-wit:

173 The N. W. ¼ of section 22, township 31 range 3 west of the 6th P. M. Knox county, Nebr. I first offered said lands for sale in 40 acre tracts and could find no bidders therefor and deeming it to the best interest of all parties concerned that — premises should be sold I offered said premises for sale in one body and sold the same to H. S. Green of Crawford county; State of Iowa for the sum of four hundred and fifteen & no/100 dollars ($415.00) he being the highest bidder therefor, and that sum being not less than two-thirds of the appraised value thereof.

Amount of principal $96.65 amount of interest $4.72 att'ys' fee $9.66 principal and interest, $111.03 Amount of proceeds of sale $415.00 Costs of court, $23.83 Costs — sale, $42.65 Total costs, $66.48 Applicable upon judgment $111.03 Amount of surplus $237.49.

Given under my hand, this 2nd day of January A. D. 1892.

JOHN DOLPHIN,
Sheriff of Knox County.

Recd. payment.

Items of Sheriff's Costs.

Certificates of county treasurer, county clerk and clerk of district court	$6.75
Making levy	1.00
Calling appraisers	.50
Swearing "	.50
Fees of "	2.00
Copy of appraisements	.50
Advertisements of sale	.50
Cost of publication	12.00
Making sale	1.00
Commission on sale	12.45
Return on sale	1.00
Making deed	1.00
Acknowledging deed	.50
Mileage	3.00
Total costs of sale	42.65

174 Office of clerk of the district court, Niobrara, Neb., July 8th, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original sheriff's return to order of sale in case No. 809— Farmers Loan & Trust Co. *vs.* Henry A. Root & N. W. ¼ Sec. 22–Twp. 31–R'ge 3 West in my office and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Copy. 809.

Application of Sheriff to County Clerk, Clerk of District Court, and County Treasurer.

To Geo. G. Bayha, county treasurer:

You are hereby required to certify, under your hand and official seal the amount and character of all liens existing against the following described land, to-wit: N. W. ¼ 22–31–3 west on the 2nd day of Dec. 1891 as they appear of record in your office.

Dated this 2nd day of Dec. 1891.

JOHN DOLPHIN, *Sheriff.*

The following liens appear of record in this office against the N. W. ¼ sec. 22–31–3 W. to-wit: Sold at private sale Feb'y 3/87 for the taxes of 1880/82, amount sold for $53.47. Sold at private sale May 28/87 for the taxes of 1883/85 amount sold for $50.87 Sold for the taxes of 1889 subsequent of 1890 paid by purchaser, amount to redeem $51.40 1891 taxes due and unpaid $15.34.

I, Geo. G. Bayha treas., of Knox county, hereby certify, that I have correctly stated above the amount and character of all liens existing against the above described lands and tenements, and also all
175 incumbrances thereon which appear of record in my office, on the 15th day of Dec. 1891.

In witness whereof, I have hereunto set my hand and affixed my official seal this 15th day of Dec. 1891.

[SEAL.] GEO. G. BAYHA, *Co. Treas.*

Office of clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original county treasurer certificate in case No. 809 Farmers

Loan & Trust Co. *vs.* Henry A. Root & N. W. ¼ Sec. 22–Twp.–31–R'ge 3 West in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Copy. 809.

Application of Sheriff to County Clerk, Clerk of the District Court, and County Treasurer.

To F. Nelson, county clerk:

You are hereby required to certify, under your hand and official seal the amount and character of all liens existing against the following described land, to-wit: N. W. ¼ 22–31–3 W. on the 2nd day of Dec. 1891 as they appear of record in your office. Dated this 2nd day of Dec. 1891.

JOHN DOLPHIN, *Sheriff.*

The following liens appear of record in this office against the above described land to-wit: No incumbrance.

176 I, F. Nelson Co. clerk of Knox county, hereby certify that I have correctly stated above the amount and character of all liens existing against the above described lands and tenements, and also all incumbrances thereon which appear of record in my office, on the 11th day of Dec. 1891.

In witness whereof, I have hereunto set my hand and affixed my official seal this 11 day of Dec. 1891.

F. NELSON, *Co. Clerk,*
[SEAL.] By A. B. CHAMBERS, *Dep'y.*

Office of clerk of the district court, Niobrara, Neb., July 8th, 1896.

STATE OF NEBRASKA, } *ss:*
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original county clerk's certificate in case No. 809 Farmers Loan & Trust Co. *vs.* Henry A. Root & N. W. ¼ Sec. 22–Twp. 31–R'ge 3 West in my office and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Copy. 809.

Application of Sheriff to County Clerk, Clerk of the District Court, and County Treasurer.

To A. L. Jones, clerk district court:

You are hereby required to certify under your hand and official seal, the amount and character of all liens existing against the following described land, to-wit: N. W. ¼ 22–31–3 west.

On the 2nd day of Dec. 1891 as they appear of record in 177 your office.

Dated this 2nd day of Dec. 1891.

JOHN DOLPHIN, *Sheriff.*

The following liens appear of record in this office against the above described land, to-wit: Decree of foreclosure in favor of Farmers Loan & Trust Co. Amount $96.65 Costs $23.83 Att'y fee $9.67.

I, A. L. Jones cl'k D. C. of Knox county, hereby certify that I have correctly stated above the amount and character of all liens existing against the above described lands and tenements and also all incumbrances thereon which appear of record in my office, on the 2 day of Dec. 1891.

[SEAL.] A. L. JONES, *Cl'k.*

Office of clerk of the district court, Niobrara, Neb., July 8th, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true, copy of the original certificate of the clerk of the district court in case No. 809–Farmers Loan & Trust Co. *vs.* Henry A. Root & N. W. ¼ Sec. 22–Twp. 31–R'ge 3 West in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Endorsed: Exhibit 18 O. A. W.

809. Copy.

EXHIBIT "19."

Sheriff Sale.

FARMERS LOAN AND TRUST COMPANY
vs.
THE N. W. ¼ OF SECTION TWENTY-TWO, TOWNSHIP THIRTY-ONE, Range Three West of the Sixth Principal Meridian in Knox County, State of Nebraska.

178 By virtue of an order of sale directed to *one* by the district court of Knox county State of Nebraska on the tenth day of November 1891 on a foreclosure of a tax lien in favor of the Farmers Loan and Trust Company as plaintiffs sand against Henry A. Root and N. W. ¼ of Section Twenty-two Township Thirty-one Range Three West as defendants for the sum of ninety-six dollars and sixty five cents and cost taxed at thirty-three dollars and forty-nine cents and accruing costs, I have levied upon the following described lands taken as the property of said defendants to satisfy said land lien to-wit: The N. W. ¼ of section twenty-two township thirty-one range three west of the sixth principal meridian in Knox Co. State of Nebraska. And will offer the same for sale to the highest bidder for cash in hand on the second day of January A. D. 1892 in front of the Grand Army of the Republic hall in Niobrara Knox county, Nebraska that being the place wherein the last term of the district court was held at the hour of one o'clock p. m. of said day when and where due attendance will be given by the undersigned.

Dated at Niobrara this second day of December, 1891.

JOHN DOLPHIN,
Sheriff of said County.

Affidavit of Publication.

STATE OF NEBRASKA, } ss:
Knox County, }

E. G. Miller being first duly sworn, deposes and says that he is publisher of the Niobrara Tribune and has knowledge of the facts herein stated. That said paper is a newspaper printed and published and of general circulation in said county. That the notice a true and correct — of which is attached hereto was published in
179 said newspaper in each weekly issue thereof for 5 consecutive weeks the first publication being upon the 2nd day of December 1891 inclusive.

[SEAL.] E. G. MILLER.

Subscribed and sworn to before me and in my presence at Niobrara, this 2nd day of January, 1892.

A. L. JONES,
Clerk of the District Court in and for Knox County.

Rec'd payment.

Office of clerk of the district court, Niobrara, Neb., July 8th, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original notice of sheriff's sale and publisher's affidavit in case No. 809–Farmers Loan & Trust Co. *vs.* Henry A. Root & N. W. ¼ Sec. 22 Twp. 31–R'ge 3 West in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Endorsed: Exhibit 19, O. A. W.

EXHIBIT "M."

Decree of Foreclosure.

FARMERS LOAN AND TRUST COMPANY, Plaintiff,
vs.
HENRY A. ROOT and N. W. ¼ SECTION 22, TOWNSHIP 31, RANGE 3 West, Defendant-.

At a session of the district court of the State of Nebraska in and for Knox county, holden at Niobrara, in said county on the tenth day of November, 1891 the Honorable Isaac Powers, Jr. being present and presiding in said court, the following among orther proceedings were had and done, to-wit:

180 Be it remembered, that on this tenth day of November, 1891, this cause came on to be heard before the court, the plaintiff appearing by M. J. Sweeley and S. Draper its attorneys, the defendants not appearing in person or by attorney and failing to appear plea- or answer, the plaintiff demands a default against the defendants Henry A. Root and The North-west Quarter of Section Twenty-two, Township 31 Range 3 West of the 6th P. M. in Knox County, Nebr. for want of appearance, plea or answer, and also that a decree be entered in this cause against the defendants as prayed for in the petition. The court finds that due and legal notice of the filing and pendency of this action was given the said defendants, and that they have failed to appear and plead in said cause in the time and manner provided for by law, and said defendant- being three times solemnly called in open court, and still failing to answer, demur or otherwise plead, are adjudged, to be in default. A default is therefore hereby entered against the defendants, and each of them, viz. Henry A. Root and North-west Quarter of Section Twenty-Two, Township 31 Range 3 West of the 6th P. M. in Knox County, Nebr. said cause having been duly submitted to the court, upon the plead-

ings and evidence, and the court having fully considered the same, the court finds that the plaintiff purchased at a legal tax sale held in said county of Knox and State of Nebraska on the — day of —— 188– for the taxes due thereon the followind described real estate situate in the county of Knox and State of Nebraska, to-wit: The north-west quarter of section twenty-two, township 31 range 3 west of the 6th P. M. in Knox county, Nebr., and that said taxes are a first lien on said described land, and paramount and superior to any right, title, lien, or interest in, to or against the same of any
181 of the defendants in this section or any other person. The court also finds that the plaintiff is the owner of the tax certificate of sale, as set forth in plaintiff's petition, and that said plaintiff is entitled to a decree foreclosing said lien for the amount due upon said taxes. The court also finds that there is due the plaintiff upon the tax sale and payments set forth in the petition, the sum of $96.65 together with the sum of $9.66 att'ys' fees as is provided by statute.

It is therefore considered, adjudged, and decreed by the court, that in case the defendants fail for twenty days from the entry of this decree to pay or cause to be paid to the plaintiff the sum of $106.31 so found due, with interest thereon at the rate of ten per cent. per annum from the date hereof together with the costs of this action taxed at $23.83 that the defendants be foreclosed of all equity of redemption or other interests in said premises: that said premises be sold and an order of sale shall be issued to the sheriff of Knox county, Nebraska, commanding him to sell the above described premises, as upon execution, and bring the proceeds thereof into court, to be applied in satisfaction of the sums so found due, in the order of their priority, as above found and costs upon the confirmation of said sale.

—— ——,
Judge of the District Court.

EXHIBIT "N."

In the District Court of Knox County, Nebraska.

THE FARMERS LOAN & TRUST COMPANY }
vs. }
—— ——. }

The following decrees of confirmation includes all the following cases. No. 804, 806 808, 809, 813, 814, 819, 820, 821, 825, 826, 827, 833, 835, 837, 846, 851.

182 Be it remembered that on the 23rd day of April 1892, the same being the 5th judicial day of the regular April 1892 term of this court this cause coming on for final hearing on the sale of real estate heretofore to-wit on the — day of January, 1892, made by John Dolphin, sheriff, pursuant to the decree and order of sale herein the court theretofore having carefully examined the proceed-

ings of said officer under such order of sale finds that all of such proceedings are regular and valid and is satisfied of the legality of such sale and that the same has been in all respects made in conformity to law and particularly to the provisions of title fourteen of the Code of Civil Proceedure of the State of Nebraska, it is therefore ordered, adjudged and decreed by the court that said sale be and the same is hereby approved and confirmed and the sheriff of said county of Knox Nebraska is ordered to execute to the purchaser of said land a deed thereto and the clerk of this court *id* directed to make this entry upon the journal of this court.

Recorded on Journal 3 at page 140, records of Knox Co., Neb.

EXHIBIT "20."

Know all men by these presents: That whereas, Farmers Loan and Trust Company did, by virtue of the judgment of the district court of the 9th judicial district of the State of Nebraska, within and for the county of Knox at the November term thereof, A. D. 1891, recover a judgment against Henry A. Root and S. W. ¼ sec. 22 twp. 31 r'ge 3 west for the sum of ninety-three dollars and *for* forty-two cents and costs of suit, taxed at twenty-three dollars — eighty-three cents; and nine dollars attorneys' fees, and whereas, it was then and there further ordered in the said action that in default of the
183 payment of the judgment aforesaid, by the said Henry A. Root and S. W. ¼ sec. 22 twp. 31 range 3 west that the sheriff of Knox county, Nebraska should cause the lands and tenements hereinafter described to be appraised advertised and sold according to law; and whereas the said Henry A. Root and S. W. ¼ sec. 22, twp. 31 range 3 west having made default therein, the said sheriff of Knox county, Nebraska, under and by virtue of the order of the same to him duly directed, did, on the 2nd day of January A. D. 1891, at 11 a. m. of said day at the front door of the G. A. R. hall in Niobrara, Knox county, Nebraska, that being the building in which the last term of the district court of said county was held in said county of Knox having first given due and legal notice of the time and place of said sale, for not less that thirty days prior thereto, in the Niobrara Tribune a newspaper printed and in general circulation in said county of Knox sell the said premises at public auction to H. S. Green of Crawford county, State of Iowa for the sum of four hundred and ninety dollars, which sale was afterwards, at the April term of said court, A. D. 1892 examined and confirmed and the said sheriff of Knox county, Nebraska as such sheriff of Knox county, Nebraska ordered to convey the said premises in fee simple to the said H. S. Green of Crawford county, State of Iowa.

Now therefore, I, the said Charles Crockett, sheriff of Knox county, Nebraska as aforesaid, in consideration of the premises, and by virtue of the powers vested in me by law, do hereby give, grant, and convey to the said H. S. Green of Crawford county, State of Iowa his heirs and assigns, the premises so as aforesaid sold, to-wit The southwest quarter of section twenty-two, in township thirty-one (31) range

three (3) west of the sixth (6th) principal meridian in Knox
184 county, Nebraska subject to prior liens as shown by the records in the county clerk's office county treasurer's office and clerk of the district court's office, with appurtenances.

To have and to hold the same to the said H. S. Green of Crawford county, State of Iowa, his heirs and assigns, and to them and their use and behoof forever.

In testimony whereof, I have as such sheriff of Knox county, Nebraska, hereunto set my hand this 16th day of May, A. D. 1892.

CHARLES CROCKETT,
Sheriff of Knox County, Nebraska.

Executed and delivered in presence of

FRANK LUNDAK.
W. M. McCLINTOCK.

THE STATE OF NEBRASKA, } ss:
Knox County, }

Personally appeared before me, the undersigned clerk of the district court of said Knox county, the said Charles Crockett sheriff of said county and acknowledged the foregoing instrument of writing, for the purposes therein set forth, to be his free act and deed.

Given under my hand and seal, this seventeenth day of May A. D. 1892.

J. T. LINDSAY, JR.,
[SEAL.] *Clerk of the District Court.*

Endorsed on back of deed: Deed. Charles Crockett, sheriff, to H. S. Green. Dated ——.

THE STATE OF NEBRASKA, } ss:
Knox County, }

Entered on numerical index and filed for record Feb'y 23, 1894 at 9 o'clock — minutes a. m. and recorded in the office of the clerk of said county, in Book M of Deeds on page "176."

CHAS. VAN CAMP,
County Clerk.

EXHIBIT "21." 803.

In the District Court of the State of Nebraska in and for Knox County.

185 THE FARMERS LOAN AND TRUST COMpany, Plaintiff,
vs.
HENRY A. ROOT and THE SOUTH-WEST Quarter of Section 22, Township *Township* 31, Range 3 West, 6th P. M., Defendants. } Petition in Chancery.

The plaintiff states:

Paragraph 1. That it is a corporation duly and legally incorporated under the laws of the State of Iowa and doing business in said State and the State of Nebraska.

Par. 2. That included in the powers of said corporation is the right to invest in tax sale certificates and to buy own and control real estate.

Par. 3. That on the 12th day of June 1888 at a regular private tax sale held in and for the county of Knox in the State of Nebraska, the plaintiff purchased for the taxes then due thereon the following described real estate situated in said county to-wit the south-west quarter of section No. twenty-two (22) in township No. thirty-one (31) of range No. three (3) west sixth P. M.

Par. 4. That at said time the plaintiff paid to the county treasurer of said county the amount of taxes due on saiid — to-wit: the sum of twenty-two & 44/100 dollars and received from said county treasurer a certificate of such purchase.

Par. 5. That thereafter under any by virtue of said tax sale and tax certificate the plaintiff paid subsequent taxes on said land as follows On the 10th day of August 1888 the sum of twenty-one & 79/100 dollars on the 9th day of July 1889 the sum of nineteen & 60/100 dollars.

Par. 6. That thereafter and not less than three months nor more than five months before the expiration of two years from the
186 time of such tax sale to-wit: on or about the — day of —— 1890 the plaintiff caused to be served on every person in actual possession of such land and the person in whose name the same was taxed a notice stating when plaintiff purchased such land in whose name taxed the description of the land purchased for what year taxed and when the time of redemption would expire as required by section 123 chapter 77 of the Statutes of Nebraska and made proof by affidavit to the county treasurer of said county of the compliance with said statutes.

Par. 7. That thereafter the making of said proof and upon the compliance with all the provisions of the statutes relating thereto and at the expiration of the time of redemption from such sale to-wit on or about the 25th day of September 1890 the county treasurer of said Knox county, Nebraska, executed and delivered to

the plaintiff a deed conveying to said plaintiff the land hereinbefore described.

Par. 8. That in serving the notice mentioned in par. 6 hereof the plaintiff has incurred and paid actual and legal costs in the sum of five dollars.

Par. 9. That it is informed and believes and therefore charges the fact to be that the owner of said land is not known and that the defendant Henry A. Root has or claims some interest therein. Wherefore plaintiff prays that its lien for the said amounts of taxes so paid by it, with interest thereon at the rate provided by statute from the several times of payment be fully established and decreed to be the first and paramount lien upon said land, that the plaintiff be allowed an attorney's fee equal to ten per cent. of the amount of such decree and costs of suit that said lien be foreclosed and said land be ordered sold to satisfy the full amount of
187 said decree with interest attorney's fees and costs of suit, costs of serving notice of the expiration of the time of redemption and accruing costs, that the sheriff or other person making said sale be ordered to put the purchaser thereunder in possession of said premises, that the deed issued under said sale be and absolute bar against each and all of the defendants and any and all persons claiming under such defendants and against all other persons and for such others and further relief as may be deemed equitable in the premises.

M. J. SWEELEY,
Attorney for the Plaintiff.

STATE OF IOWA, }
Woodbury County, } ss:

I, James F. Toy being sworn do state that I am treasurer of The Farmers Loan and Trust Company the plaintiff above named that said plaintiff is a corporation that I have read the foregoing petition and know its contents and that the statements therein contained are true as I verily believed.

JAMES F. TOY, *Tr.*

Subscribed in my presence and sworn to before me this 28th day September, A. D. 1891.

[SEAL.] L. GREENWOOD.

Office of the clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, }
Knox County, } ss:

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original petition in case No. 833 Farmers Loan & Trust Co. *vs.* Henry A. Root and S. W. ¼ Sec. 22–Twp. 31 R'ge 3 West in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.]

R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

188 Endorsed: Copy. Farmers Loan & Trust Co. — Henry A. Root & S. W. ¼ 22–31–3 Petition in chancery. Exhibit "21" 833. The State of Nebraska, Knox county, ss. Filed this 30th day of September A. D. 1891 A. L. Jones, clerk of the dist. court.

In the District Court of Knox County, Nebraska.

THE FARMERS LOAN AND TRUST COMPANY
vs.
HENRY A. ROOT and THE S.W. ¼ OF SEC. 22, Twp. 31, Range 3 West, 6th P. M.

Affidavit for Publication of Notice.

STATE OF IOWA, *Woodbury County,* } ss:

I, M. J. Sweeley being sworn do state that I am the attorney for the plaintiff above named that *that* this case is one of those mentioned in section 77 title V of the Code of Civil Procedure of the State of Nebraska and is an action relating to real property in said State in which the defendants have or claim a lien or interest actual or contingent and the relief demanded consists wholly or partially in excluding the defendants from any interest therein that the defendant Henry A. Root is non-resident of said State of Nebraska and that service of summons cannot be made on him within said State: I further state that the owner of the real estate involved in said action described above is not known all of which I verily believe to be true.

M. J. SWEELEY.

Subscribed and sworn to before me this 28th day of September 1891.

[SEAL.]

L. GREENWOOD,
Notary Public.

Office of the clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, *Knox County,* } ss:

189 I, R. H. Harris, clerk of the district court in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original affidavit for service by publication in case No. 833 Farmers Loan & Trust Co. *vs.* Henry A. Root & S. W. ¼ Sec. 22, Twp. 31, R'ge 3 West in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Endorsed: Exhibit "22" O. A. W. Copy Farmers Loan & T. Co. *vs.* Henry A. Root & S. W. ¼ 22-31-3 Affidavit. The State of Nebraska, Knox county, *ss.* Filed this 30th day of September A. D. 1891. A. L. Jones clerk of the dist. court.

Copy. 833.

EXHIBIT "23."

In the District Court of Knox County, Nebraska.

THE FARMERS LOAN AND TRUST COMPANY, Plaintiff,
versus
HENRY ROOT and THE SOUTHWEST QUARTER OF SECTION TWENTY-two (22), Township Thirty-one (31), Range Three (3) West, of the 6th Principal Meridian, Defendants.

THE STATE OF NEBRASKA, } *ss:*
Knox County, }

To the above named defendants and all persons interested in said real estate:

190 You are hereby notified that the petition of plaintiff is now on file in the district court of Knox county Nebraska, wherein plaintiff claims that it purchased said real estate for taxes due thereon in the sum of twenty-two dollars and forty-four cents, at the tax sale held in said county on the 12th day of June 1888 and that under said sale it has paid subsequent taxes on said land as follows to-wit:

On the 10th day of August 1888, twenty-one dollars a-d seventy-nine cents, and on the 9th day of July 1889, nineteen dollars and sixty cents, for which sums with interest as provided by statute plaintiffs claims the first lien against said premises and asks the foreclosure thereof and that the said property be sold to satisfy the amount due plaintiff together with the further sum of ten per cent. of said amount as attorney's fees and costs of suit, and you are further notified to appear and answer said petition on or before Monday the 9th day of November 1891, or the petition will be taken as true and judgment rendered accordingle.

Dated this 30th day of September 1891.

FARMERS LOAN & TRUST COMPANY,
By M. J. SWEELEY, *Its Att'y.*

Publisher's Affidavit.

THE STATE OF NEBRASKA, } ss:
Knox County, }

I, Ed A. Fry being first duly sworn, depose and say that I am the publisher of the Niobrara Pioneer a weekly newspaper of general circulation printed and published in said county and that the annexed notice was published in the original body of said paper for four consecutive weeks, the first publication being in the regular issue of October 2 1891, and ending with the regular issue of October 23 1891, and further I saith not.

ED A. FRY.

191 Subscribed in my presence and sworn to before me on this 9 day of November A. D. —

H. WESTERMANN,
Notary Public.

[SEAL.]

Office of clerk of the district court, Niobrara, Neb., July 8th, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original legal notice & publisher's affidavit in case No. 833 Farmers Loan & Trust Co. *vs.* Henry A. Root & S. W. ¼ Sec. 22, Twp. 31 R'ge 3 West. in my office, and all endorsements thereon.

Witnes- my hand and the seal of said court this 8th day of July A. D. 1896.

R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

[SEAL.]

Endorsed: 833 Exhibit 23 O. A. W. The State of Nebraska, Knox county. Filed this 9th day of November A. D. 1891. A. L. Jones clerk of the dist court.

EXHIBIT "24."

Order of Sale.

THE STATE OF NEBRASKA, } ss:
Knox County, }

The State of Nebraska to the sheriff of said county:

In the district court within and for the county of Knox and State of Nebraska, in a certain action in the district court pending wherein Farmers Loan & Trust Company — plaintiff and Henry A. Root, and S. W. ¼ Sec. 22, Tp. 31 R'ge 3 W. defendant-

192 You are hereby commanded to appraise, advertise, and sell according to law, the following described premises, to-wit: The south-west quarter of section twenty-two (22) township thirty-one (31) range three (3) west of the 6th P. M. in Knox county, Nebraska, to satisfy a judgment obtained in our said court at the November A. D. 1891 term thereof, to-wit; on the 10th day of November A. D. 1891 wherein the said Farmers Loan & Trust Company recovered of the said Henry A. Root and S. W. ¼ Sec. 22 Twp. 31 Range 3 West on the consideration of our said court the sum of ninety-three dollars and forty-two cents, and his costs taxed at twenty-three dollars and eighty-three cents, and nine and — dollars attorneys' fee, and — of your proceedings therein you report to our said court on the first day of the next term thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of our said district court, at Niobrara Nebraska, this 1 say of December, A. D. 1891.

[SEAL.] A. L. JONES, *Clerk.*

Office of clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original order of sale in case No. 833 Farmers Loan & Trust Co. *vs.* Henry A. Root & S. W. ¼ Sec. — Twp. 31–R'ge 3 West in my office and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

R. H. HARRIS,

[SEAL.] *Clerk of the District Court in and for Knox County, Neb.*

193 Endorsed: Order of sale. Doc. 2 No. 833, page 112. Farmers Loan & Trust Company, plaintiff, *vs.* S. W. ¼ 22–31–3 W. defendants Date of judgment November 10, 1891 M. J. Sweeley & S. Draper plaintiff's attorney-. Received Dec. 1st, 2 p. m. A. D. 1891 John Dolphin sheriff Returned and filed January 5th, 1892. A. L. Jones clerk.

Copy.

THE STATE OF NEBRASKA, } ss:
Knox County, }

We, S. Saunders and Wm. C. Miller, two disinterested freeholders and residents of Knox county, were by the sheriff of said county called on an inquest to appraise the interest of Henry A. Root and S. W. ¼ sec. 22 twp. 31 range 3 W. in the following lands and tenements to-wit: The south-west quarter of section twenty-two (22) township thirty-one (31) range three (3) west of the 6th P. M. in Knox

county Nebraska, levied upon by said sheriff as the property of above defendants on an order of sale in favor of Farmers Loan and Trust Company and against said defendants and having taken the oath required by law, do with said sheriff appraise the same as follows. Gross value of said lands and tenements. $800.00 Taxes as per county treasurer certificate $66.39 Mechanics' lien as per county clerk's certificate — Judgments as per clerk of district court certificate — Total liens incumbrances —. Which deducted from the gross value of said real estate leaves $733.61 which we appraise as the real value in money of the interest of above defendants in said lands and tenements.

Dated this 3rd day of December 1891.

S. SAUNDERS.
WM. C. MILLER.
JOHN DOLPHIN, *Sheriff.*

194 I, hereby certify, that the above named S. Saunders and Wm. C. Miller are freeholders and residents of said Knox county and that they were by me duly summoned and sworn to make the appraisement as above set forth on the day and year last above written.

JOHN DOLPHIN, *Sheriff.*

Office of clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original appraisal in case No. 833, Farmers Loan & Trust Co. vs. Henray A. Root, S. W. ¼ Sec. 22–Twp. 31 R'ge 3 West. in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Copy. 833.

Return to Order of Sale.

STATE OF NEBRASKA, } ss:
Knox County, }

Received this order this first day of December 1891 at 2 o'clock p. m. and according to the command thereof, I summoned S. Saunders and Wm. C. Miller two disinterested residents and freeholders of said county, and administered to them and oath impartially to appraise the interest of Henry A. Root and all unknown owners. Defendants in said lands and tenements, upon actual view thereof, and I, together with said S. Saunders and Wm. C. Miller made an appraisement in writing of said lands and tenements, which appraise-

ment is herewith returned, a copy of which I forthwith de-
195 posited with the clerk of the district court of said county, together with the certificate of the county clerk, clerk of the district court and treasurer of said county and thereupon on the 2nd day of December 1892 I caused a notice to be published in the Niobrara Tribune a newspaper printed and in general circulation in said county, that I would offer said lands for sale at the front door of the Grand Army of the Republic hall in Niobrara, Knox county, Nebraska, that being the building wherein the last term of the district court of said county was held on the 2nd day of January A. D. 1892 at 11 o'clock a. m. of said day after having so advertised the same for more than thirty days, and at the time and place stated in said notice, I offered the said lands and tenements for sale at public auction, and sold the same as follows, to-wit: The south-west quarter of section twenty-two (22) township thirty-one (31) range three (3) west of the 6th P. M. in Knox county, Nebraska, I first offered said land for sale in 40 acre tracts and could find no bidders therefor and deeming it to the best interest of all parties concerned that said premises should be sold, I offered said premises for sale in one body and sold the same to H. S. Green of Crawford county, State of Iowa, (subject to prior tax liens) for the sum of four hundred and ninety & no/100 dollars ($490.00) he being the highest bidder therefor, and that sum being not less than two-thirds of the appraised value thereof.

Amount of principal $93.42 Amount of interest $4.15 Att'ys' fee $9.83 Principal and interest, $107.40. Amount of proceeds of sale $490.00 Costs of court $23.83 Costs of sale $35.25 Total costs $59.08 Applicable upon judgment, $107.40 Amount of surplus $323.52.

Given under my hand, this 5th day of January A. D. 1892.

JOHN DOLPHIN,
Sheriff of Knox County.

Rec'd payment.

196 *Items of Sheriff's Costs.*

Certificates of county treasurer, county clerk and clerk of district court	$6.75
Making levy	1.00
Calling appraisers	.50
Swearing "	.50
Fees of "	2.00
Copy of appraisements	.50
Advertisement of sale	.50
Cost of publication	12.00
Making sale	1.00
Commission on sale	5.00
Return on sale	1.00
Making deed	1.00
Acknowledging deed	.50
Mileage	3.00
Total costs of sale	35.52

Office of clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original sheriff's return to order of sale in case No. 833, Farmers Loan & Trust Co. *vs.* Henry A. Root & S. W. ¼ Sec. 22–Twp. 31–R'ge 3 West. in my office and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

R. H. HARRIS,
[SEAL.] *Clerk of the District Court in and for Knox County, Neb.*

197 Copy. 833.

Return of Sheriff to the County Clerk of the District Court.

To G. G. Bayha, county treasurer:

You are hereby required to certify, under your hand and official seal the amount and character of all liens existing against the following described land, to-wit: S. W. ¼, sec. 22 r'ge 3 W. On the 2 day of Dec. 1891 as they appear of record in your office.

Dated this 2 day of Dec. 1891.

JOHN DOLPHIN, *Sheriff.*

The following liens appear of record in this office against the S. W. ¼ sec. 22 twp. 31, r'ge 3 west of the 6th P. M. in Knox county, Neb. to-wit: Sold for the taxes of 1889, Subsequent taxes of 1890, paid by the purchaser amount to redeem $51.05 Taxes of 1891 due and unpaid $15.34 Sold for the taxes of 1880/82, Feb'y 3/87 Amount sold for $53.68 Sold for the taxes of 1883/85, May 28/87 Amount sold for $50.87.

I, Geo. G. Bayha, treas. of Knox county, hereby certify that I have correctly stated above the amount and character of all liens existing against the above described lands and tenements, and also all incumbrances thereon which appear of record in my office, on the 2 day of Dec. 1891.

In witness whereof, I have hereunto set my hand and affixed my official seal this 2 day of Dec.

[SEAL.] GEO. G. BAYHA, *Co. Treas.*

Office of clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy

of the original county treasurer's certificate in case No. 833,
198 Farmers Loan & Trust Co. *vs.* Henry A. Root & S. W. ¼ Sec. 22–Twp. 31–R'ge 3 West. in my office and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Copy. 833.

Application of Sheriff to County Clerk, Clerk of the District Court, and County Treasurer.

To A. L. Jones, clerk dist. court:

You are hereby required to certify under your hand and official seal, the amount and character of all liens existing against the following described land, to-wit: S. W. ¼ sec. 22, tp. 31 r'ge 3 W. On the 2 day of Dec. 1891 as they appear of record in your office. Dated this 2 day of Dec. 1891.

JOHN DOLPHIN, *Sheriff.*

The following liens appear of record in this office against the above described land, to-wit: Decree of foreclosure in favor of Farmers Loan and Trust Co. Amount $93.42 Costs $23.83 Att'y fee $9.34.

I, A. L. Jones cl'k D. C. of Knox county, hereby certify that I have correctly stated above the amount and character of all liens existing against the above described lands and tenements, and also all incumbrances thereon which appear of record in my office, on the 2 day of Dec. 1891.

In witness whereof I have hereunto set my hand and affixed my official seal this 2 day of Dec. 1891.

[SEAL.] A. L. JONES, *Clerk.*

Office of clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for
199 Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original certificate of the clerk of the district court in case No. 833, Farmers Loan & Trust Co. *vs.* Henry A. Root & S. W. ¼ Sec. 22–Twp.–31–R'ge 3 West. in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Copy. 833.

Application of Sheriff to County Clerk, Clerk of the District Court, and County Treasurer.

To F. Nelson, county clerk :

You are hereby required to certify, under your hand and official seal, the amount and character of all liens existing against the following described land, to-wit S. W. ¼ sec. 22, tp. 31, r'ge 3 W. On the 2 day of Dec. 1891 as they appear of record in your office. Dated this 2 day of Dec. 1891.

JOHN DOLPHIN, *Sheriff.*

The following liens appear of record in this office against the above described land, to-wit No incumbrance.

I, F. Nelson Co. cl'k of Knox county, hereby certify that I have correctly stated above the amount and character of all liens existing against the above described lands and tenements, and also all incumbrances thereon which appear of record in my office, on the 2 day of Dec. 1891.

In witness whereof, I have hereunto set my hand and affixed my official seal this 2 day of Dec. 1891.

[SEAL.] F. NELSON, *Co. Cl'k.*

Office of clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, } ss :
Knox County, }

200 I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original certificate of the county clerk of Knox Co. Neb. in case No. 833, Farmers Loan & Trust Co. *vs.* Henry A. Root & S. W. ¼ Sec. 22, Twp. 31 R'ge 3 west in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Endorsed : Exhibit 24 The State of Nebraska, Knox county. *ss.* Filed this 3 day of December A. D. 1891, A. L. Jones, clerk of the dist. court.

Copy. 833.

EXHIBIT "24½."

Sheriff Sale.

FARMERS LOAN AND TRUST COMPANY
vs.
THE SOUTHWEST QUARTER OF SECTION TWENTY-TWO, IN TOWNSHIP Thirty-one, Range Three West, of the Sixth Principal Meridian, in Knox County, State of Nebraska.

By virtue of an order of sale directed to me from the district court of Knox county, Nebraska in a judgment obtained before Isaac Powers Jr. judge of the 9th judicial district *and* in and for Knox county, Nebraska, on the tenth day of November 1891 on foreclosure of a tax lien in favor of Farmers Loan and Trust Company as plaintiff and against Henry A. Root and The South-west Quarter of Section Twenty-two in Township Thirty-one Range Three West
201 as defendant- for the sum of ninety-three dollars and forty-two cents and costs taxed at thirty-two — and eighty-three cents and accruing costs, I have levied upon the following described lands taken as the property of said defendants to satisfy said tax liens to wit the south-west quarter of section twenty-two in township thirty-one range three west of the sixth principal meridian in Knox county State of Nebraska and will offer the same for sale to the highest bidder for cash in hand on the second day of January, A. D. 1892, in front of Grand Army of the Republic hall in Niobrara, Knox county Nebraska, that being the building wherein last term of court was held at the hour of eleven o'clock a. m. of said day when and where due attendance will be given by the undersigned.

Dated this second day of December 1891.

JOHN DOLPHIN,
Sheriff of said County.

833. Copy.

Affidavit of Publication.

STATE OF NEBRASKA, } ss:
County of Knox, }

E. G. Miller being first duly sworn deposes and says *the* he is publisher of the Niobrara Tribune and has knowledge of the facts herein stated. That said paper is a newspaper printed and published and of general circulation in said county. The notice, a true and correct copy of which is attached hereto was published in said newspaper, in each weekly issue thereof for 5 consecutive weeks the first publication being on the 2nd day of December 1891 inclusive.

E. G. MILLER.

Subscribed and sworn to before me and in my presence at Niobrara, this 2nd day of January, 1892.

[SEAL.] A. L. JONES,
Clerk of the Dis'ct Court in and for Knox Co.

Received payment.

202 Office of clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, *Knox County,* } ss:

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original sheriff's sale in case No. 833 Farmers Loan & Trust Co. *vs.* Henry A. Root & S. W. ¼ Sec. 22 Twp. 31 R'ge 3 West. in my office and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

EXHIBIT "O."

Decree of Foreclosure.

FARMERS LOAN AND TRUST COMPANY, Plaintiff,
vs.
HENRY A. ROOT and S. W. ¼ SECTION 22, TOWNSHIP 31, RANGE 3 West, Defendant-.

At a session of the district court of the State of Nebraska, in and for Knox county, holden at Niobrara, in said county on the tenth day of November, 1891, the Honorable Isaac Powers, Jr. being present and presiding in said court the following among other proceedings were had and done, to-wit:

Be it remembered, that on this tenth day of November 1891, this cause came on to be heard before the court, the plaintiff appearing by M. J. Sweeley and S. Draper its attorneys, the defendants not appearing in person or by attorney and failing to appear plea- or answer, the plaintiff demands a default against the defendants

Henry A. Root and The South-west Quarter of Section Twenty-
203 two, Township 31 Range 3 West of the 6th P. M. in Knox County, Nebr. for want of appearance, plea or answer, and also that decree be entered in this cause against the defendants as prayed for in the petition. The court finds that due and legal notice of the filing and pendency of this action was given the said defendants, and that they have failed to appear and plea- in said cause in the time and manner provided for by law; and said defendants, being three times solimnly called in open court, and still failing to answer, demur or otherwise plead, are adjudged to be in default, A default

is therefore hereby entered against the defendants and each of them viz: Henry A. Root and South-west Quarter of Section Twenty-Two, Township 31 Range 3 West of the 6th P. M. in Knox County, Neb. said cause having been duly submitted to the court, upon the pleadings and evidence, and the court having fully considered the same, the court finds that the plaintiff purchased at a legal tax sale held in said county of Knox and State of Nebraska, on the — day of —— 188– for the taxes due thereon the following described real estate situate in the county of Knox and State of Nebraska, to-wit: The south-west quarter of section twenty-two township 31 range 3 west of the 6th P. M. in Knox county, Nebr. and that said taxes are a first lien on said described land, and paramount and superior to any right, title, lien, or interest in, to or against the same of any of the defendants in this action or any other person. The court also finds that the plaintiff is the owner of the tax certificate of sale, as set forth in plaintiff's petition, and that said plaintiff is entitled to a decree foreclosing said lien for the amount due upon said taxes The court also finds that there is due the plaintiff upon the tax sale and payments set forth in the petition, the sum of $93.42 together with the sum of $9.34 att'ys' fees as is provided by statute.

It is therefore considered, adjudged, and decreed by the
204 court, that in case the defendants fail for twenty days from the entry of this decree to pay or cause to be paid to the plaintiff the sum of $102.76 found due, with interest thereon at the rate of ten per cent. per annum from the date hereof together with the costs of this action taxed at $23.83, that the defendants be foreclosed of all equity of redemption, or other interests in said premises; that said premises be sold and an order of sale shall be issued to the sheriff of Knox county, Nebraska, commanding him to sell the above described premises, as upon execution, and bring the proceeds thereof into court, to be applied in satisfaction of the sums so found due, in the order of their priority, as above found, and costs upon the confirmation of said sale.

—— ——,
Judge of the District Court.

EXHIBIT "P."

In the District Court of Knox County, Nebraska.

THE FARMERS LOAN & TRUST COMPANY }
vs. }
—— ——. }

The following decrees of confirmation includes all the following cases: 804, 806, 809, 813, 814, 819, 820, 821, 825, 826, 827, 833, 835, 837, 843, 846, 851.

Be it remembered that on the 23rd day of April, 1892 the same being the 5th judicial day of the regular April 1892 term

of this court this cause coming on for final hearing on the sale of real estate heretofore to-wit, on the — day of January 1892, made by John Dolphin, sheriff, pursuant to the decree and order of sale herein the court therefore having carefully examined
205 the proceedings of said officer under such order of sale finds that all of such proceedings are regular and valid and is satisfied of the legality of such sale and that the same has been in all respects made in conformity to law and particularly to the provisions of title fourteen of the Code of Civil Procedure of the State of Nebraska. It is therefore ordered, adjudged and decreed by the court that said sale be and the same is hereby approved and confirmed and the sheriff of said county of Knox Nebraska is ordered to execute to the purchaser of said land a deed thereto and the clerk of this court is directed to make this entry upon the journal of this court.

Recorded on Journal 3 at page 149 records of Knox Co., Neb.

EXHIBIT "25."

Know all men by these presents: That whereas, Farmers Loan and Trust Company did, by virtue of the judgment of the district court of the 9th judicial district of the State of Nebraska within and for the county of Knox at the November term thereof A. D. 1891, recover a judgment against Henry A. Root and S. ½ S. E. ¼ sec. 22 twp. 31 range 3 west for the sum of forty-nine dollars and *for* forty-two cents and costs of suit, taxed at twenty-one dollars thirty-three cents; and four 94/100 dollars attorneys' fees, and whereas, it was then and there further ordered in the said action that in default of the payment of the judgment aforesaid by the said Henry A. Root and S. ½ S. E. ¼ sec. 22 twp. 31 range 3 west that the sheriff of Knox county, Nebraska should cause the lands and tenements hereinafter described to be appraised advertised and sold according to law; and whereas the said Henry A. Root and S. ½ S. E. ¼ sec. 22, twp. 31 range 3 west having made default therein, the said sheriff of Knox county, Nebraska, under and by virtue of the order of the same to him duly directed did on the 2nd day of January A. D. 1891 at 11 a. m.
206 of said day at the front door of the G. A. R. hall in Niobrara, Knox county, Nebraska, that being the building in which the last term of the district court of said county was held in said county of Knox (having first given due and legal notice of the time and place of said sale, for not less than thirty days prior thereto, in the Niobrara Tribune a newspaper printed and in general circulation in said county of Knox sell the said premises at public auction to H. S. Green of Crawford county, State of Iowa for the sum of two hundred and forty-five dollars, which sale was afterwards at the April term of said court, A. D. 1892 examined and confirmed and the said sheriff of Knox county Nebraska ordered to convey the said premises in fee simple to the said H. — Green of Crawford county, State of Iowa.

Now, therefore I, the said Charles Crockett, sheriff of Knox county, Nebraska as aforesaid, in consideration of the premises, and by virtue

of the powers vested in me by law, do hereby give, grant, and convey to the said H. S. Green of Crawford county, State of Iowa his heirs and assigns, the premises so as aforesaid sold, to-wit the south half of the south-east quarter of section twenty-two, in township thirty-one (31) range three (3) west of the sixth (6th) principal meridian in Knox county Nebraska, subject to prior liens as shown by the records in the county clerk's office, county treasurer's office and clerk of the district court's office, with appurtenances.

To have and to hold the same to the said H. S. Green of Crawford county, State of Iowa, his heirs and assigns, and to them and their use and behoof forever.

In testimony whereof, I have as such sheriff of Knox county, Nebraska, hereunto set my hand this 16th day of May A. D. 1892.

CHARLES CROCKETT,
Sheriff of Knox County, Nebraska.

Executed and delivered in presence of—

FRANK LUNDAK.
W. M. McCLINTOCK.

207 THE STATE OF NEBRASKA, } ss:
Knox County, }

Personally appeared before me, the undersigned, clerk of the district court of said Knox county, the said Charles Crockett sheriff of said county and acknowledged the foregoing instrument of writing, for the purposes therein set forth, to be his free act and deed.

Given under my hand and seal, this seventeenth day of May A. D. 1892.

J. T. LINDSAY, JR.,
[SEAL.] *Clerk of the District Court.*

Endorsed on back of deed: Deed. Charles Crockett, sheriff, to H. S. Green. Dated ——.

THE STATE OF NEBRASKA, } ss:
Knox County, }

Entered on numerical index filed for record Feb'y 23, 1894 at 9 o'clock — minutes a. m. and recorded in the office of the clerk of said county, in Book M of Deeds, on page "179."

CHAS. VAN CAMP,
County Clerk.

Copy. 825.

EXHIBIT "26."

In the District Court of the State of Nebraska in and for Knox Co.

THE FARMERS LOAN AND TRUST COMPANY, Plaintiff,
vs.
HENRY A. ROOT and THE SOUTH HALF OF the South-east Quarter of Section 22, Township 31, Range 3 West, 6th P. M., Defendants. } Petition in Chancery.

The plaintiff states:

Paragraph 1. That it is a corporation duly and legally incorporated under the laws of the State of Iowa and doing business in said State and the State of Nebraska.

Par. 2. That included in the powers of said corporation
208 is the right to invest in tax sale certificates and to buy own and control real estate.

Par. 3. That on the 12th day of June 1888 at a regular private tax sale held in and for the county of Knox in the State of Nebraska, the plaintiff purchased for the taxes then due thereon the following described real estate situated in said county to-wit:

The south half of the south-east quarter of section No. twenty-two (22) in township No. thirty-one (31) of range No. three (3) west six*ht* P. M.

Par. 4. That at said time the plaintiff paid to the county treasurer of said county the amount of taxes due on said land to-wit: the sum of twelve & 55/100 dollars and received from said county treasurer a certificate of such purchase.

Par. 5. That thereafter under and by virtue of said tax sale and tax certificate the plaintiff paid subsequent taxes on said lands as follows On the 10th day of August 1888 the sum of 10 & 88/100 dollars on the 9th day of July 1889 the sum of ten & 30/100 dollars.

Par. 6. That thereafter and not less than three months nor more than five months before the expiration of two years from the time of such tax sale, to-wit; on or about the — day of —— 1890, the plaintiff caused to be served on every person in actual possession of such land, and the person in whose name the same was taxed, a notice stating when plaintiff purchased such land, in whose name taxed, the description of the land purchased, for what year taxed, and when the time or redemption would expire as required by section 123 chapter 77, of the Statutes of Nebraska, and made proof by affidavit to the county treasurer of said county of the compliance with said statutes.

209 Par. 7 That after the making of said proof and upon the compliance with all the provisions of the statutes relating

thereto and at the expiration of the time of redemption from such sale to-wit; on or about the 25th day of September 1890, the county treasurer of said Knox county Nebraska, executed and delivered to the plaintiff a deed conveying to said plaintiff the land hereinbefore described.

Par. 8. That in serving the notice mentioned in paragraph 6, hereof the plaintiff has incurred and paid actual and legal costs in the sum of five dollars.

Par. 9. That it is informed and believes and therefore charges the fact to be that the owner of said land is not known and that the defendant Henry A. Root has or claims some interest therein.

Wherefore plaintiff prays that its lien for the said amounts of taxes so paid by it with interest thereon at the rate provided by statute from the several times of payment be fully established and decreed to be the first and paramount lien upon said land that plaintiff be allowed an attorney's fee equal to ten per cent. of the amount of such decree and costs of suit, that said lien be foreclosed and said land be ordered sold to satisfy the full amount of said decree with interest, attorney's fees and costs of suit, costs of serving notice of the expiration of the time of redemption, and accruing costs, that the sheriff or other person making said sale be ordered to put the purchaser thereunder in possession of said premises, that the deed issued under said sale be an absolute bar against each and all of the defendants and any and all persons claiming under such defendant-, and against all other persons and for such other and further relief as may be deemed equitable in the premises.

M. J. SWEELEY,
210 *Attorney for the Plaintiff.*

STATE OF IOWA, }
Woodbury County, } ss:

I, James F. Toy being sworn, do state that I am treasurer of The Farmers Loan and Trust Company, the plaintiff above named, that said plaintiff is a corporation, that I have read the foregoing petition and know its contents, and that the statements therein contained are true as I verily believe.

JAMES F. TOY, *Tr.*

Subscribed in my presence and sworn to before me this 28th day of September, A. D. 1891.

[SEAL.] L. GREENWOOD,
Notary Public.

Office of clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, }
Knox County, } ss:

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original petition in case No. 825 Farmers Loan & Trust

Co. *vs.* Henry A. Root and S. ½ S. E. ¼ Sec. 22–Twp. 31 R'ge 3 West. in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.]

R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Endorsed: Exhibit 26 O. A. W. Copy Farmers Loan & Trust Co. *vs.* Henry A. Root & S. ½ S. E. ¼ 22–31–3 W. Petition in chancery. State of Nebraska, Knox county, *ss.* Filed this 30th day of September A. D. 1891 A. L. Jones, clerk of the district court.

211 825. Copy.

EXHIBIT "27."

In the District Court of Knox County, Nebraska.

THE FARMERS LOAN AND TRUST COMPANY *vs.* HENRY A. ROOT and S. ½ S. E. ¼, SEC. 22, Twp. 31, Rge. 3 West, 6th P. M. } Affidavit for Publication of Notice.

STATE OF IOWA, *Woodbury County,* } *ss:*

I, M. J. Sweeley, being sworn do state that I am the attorney for the plaintiff above named, that *that* this case is one of th-se mentioned in section 77, title V of the Code of Civil Procedure of the State of Nebraska and is an action relating to real property in said State in which the defendants have a claim or lien or interest actual or contingent, and the relief demanded consists wholly or partially in excluding the defendants from any interest therein, that the defendant Henry A. Root is a non-resident of said State of Nebraska and that service of summons cannot be made on him within said State. I further state that the owner of the real estate involved in said action and described above is not known, all of which I verily believe to be true.

M. J. SWEELEY.

Subscribed and sworn to before me this 28th day of September, A. D. 1891.

[SEAL.]

L. GREENWOOD,
Notary Public.

Office of the clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, *Knox County,* } *ss:*

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing

is a true copy of the original affidavit for service by publication in case No. 825 Farmers Loan & Trust Co. *vs.* Henry A. Root &
212 S. ½ S. E. ¼ Sec. 22 Twp. 31, R'ge 3 West. in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Endorsed: Exhibit 27 O. A. W. Copy Farmers Loan & Trust Co. *vs.* Henry A. Root & S. ½ S. E. ¼ 22-31-3 Affidavit. The State of Nebraska, Knox county, *ss.* Filed this 30th day of September A. D. 1891. A. L. Jones, clerk of the dist. court.

825. Copy.

EXHIBIT "28."

Affidavit of Publication.

STATE OF NEBRASKA, } *ss:*
County of Knox, }

A. G. Miller being first duly sworn deposes and says that he is proprietor of the Niobrara Tribune and has knowledge of the facts herein stated. That said paper is a newspaper printed and published, and of general circulation in said county. That the notice a true and correct copy of which is attached hereto was published in said newspaper in each weekly issue thereof for 4 consecutive weeks the first publication being upon the 30 day of September 1891 inclusive.

E. G. MILLER.

Subscribed in my presence and sworn to before me at Niobrara this 22nd day of October 1891.

[SEAL.] A. L. JONES,
Clerk of the Dist. Court in and for Knox County, Neb.

Notice.

In the District Court of Knox County, Nebraska.

THE FARMERS LOAN AND TRUST COMPANY, Plaintiff,
vs.
HENRY A. ROOT and SOUTH HALF, SOUTH-EAST QUARTER,
213 Section 22, Township 31, Range 3 West, of the 6th P. M., in Knox County, Nebraska, Defendants.

THE STATE OF NEBRASKA, }
Knox County. }

To the above named defendants and all persons interested in said real estate:

You are hereby notified that the petition of plaintiff is now on file in the district court of Knox county Nebraska, wherein plaintiff

claims that it purchased said real estate for taxes due thereon in the sum of $12.55 at the *at the* tax sale held in said county on the 12th day of June, 1888, and that under said sale it has paid subsequent taxes on said land as follows to-wit:

On the 9th day of July 1889 $10.30 for which sums with interest as provided by statutes plaintiff claims the first lien against said premises, and asks the foreclosure thereof and that the said property be sold to satisfy the amount due plaintiff together with the further sum of ten per cent. of said amount as attorney's fees and costs of suit.

And you are further notified to *and* answer said petition on or before Monday the 9th day of November, 1891, or the petition will be taken as true and judgment rendered accordingly. Dated this 30th day of September 1891.

FARMERS LOAN & TRUST COMPANY,
By M. J. SWEELEY, *Its Attorney.*

4 squares $10.00.

Office of clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original legal notice & publisher's affidavit in case No. 825 Farmers Loan & Trust Co. *vs.* Henry A. Root — S. ½ S. E. ¼ Sec. 22, Twp. 31 R'ge 3 West. in my office, and all endorsements thereon.

214 Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.]

R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Endorsed: Exhibit 28 O. A. W. Copy of affidavit of publication.

THE STATE OF NEBRASKA, } ss:
Knox County, }

Filed this 7th day of November A. D. 1891. A. L. Jones clerk of the dist. court.

Copy.

EXHIBIT "29."

Appraisal.

STATE OF NEBRASKA, } ss:
Knox County, }

We, S. Saunders and Wm. C. Miller, two disinterested freeholders and residents of Knox county were by the sheriff of said

county called on an inquest to appraise the interest of Henry A. Root and S. ½ of S. E. ¼ of sec. 22, tp. 31, range 23 west in the following lands and tenements to-wit: The S. ½ of the S. E. ¼ of section 22, township 31, range 3 west of the 6th principal meridian, Knox county, Nebraska, levied upon by said sheriff as the property of above defendants, on an order of sale in favor of Farmers Loan & Trust Company and against said defendants and having taken the oath required by law do with said sheriff appraise the same as follows:

Gross value of said lands and tenements.....	$400.00
Taxes, as per county treasurer's certificate.....	34.18
Mechanic's lien, as per Co. clerk's certificate.....	
Judgments as per clerk of dist. court's certificate.....	
Total liens and encumbrances.....	

which deducted from the gross value of said real estate leaves $365.82 which we appraise as the real value in money of the
215 interest of the above defendants in said lands and tenements.
Dated the 2nd day of Dec. 1891.

S. SAUNDERS.
WM. C. MILLER.
JOHN DOLPHIN, *Sheriff.*

I hereby certify that the above named S. Saunders and Wm. C. Miller are freeholders and residents of said Knox county, and that they were by me duly summoned and sworn to make the appraisement as above set forth on the day and year last above written.

JOHN DOLPHIN, *Sheriff.*

Office of clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court in and for Knox county, Nebraska, do hereby certify that the above and foregoing is a true copy of the original appraisal in case No. 825 Farmers Loan & Trust Co. *vs.* Henry A. Root & S. ½ S. E. ¼ Sec. 22, Twp. 31 R'ge 3 West in my office and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Endorsed: Copy of appraisement 825.

Copy. 825.

Order of Sale.

STATE OF NEBRASKA, } ss:
Knox County, }

The State of Nebraska to the sheriff of said county:

825 In the district court within and for the county of Knox and State of Nebraska, in a certain action in the district court
216 pending, wherein Farmers Loan & Trust Company plaintiff and Henry A. Root, and S. ½ S. E. ¼ Sec. 22, Twp. 31 Range 3 West, def-.

You are hereby commanded to appraise, advertise, and sell according to law, the following described premises, to-wit: The south half of the south-east quarter of section twenty-two (22) township thirty-one (31) range three (3) west of the 6th P. M. in Knox county, Nebraska, to satisfy a judgment obtained in our said court at the November A. D. 1891 term thereof, to-wit: on the 10th day of November A. D. 1891 wherein the said Farmers Loan & Trust Company recovered of the said Henry A. Root and S. ½ of S. E. ¼ of Sec. 22 Twp. 31 Range 3 West on the consideration of our said court the sum of forty-nine dollars and forty-two cents and his costs taxed at twenty-one dollars and thirty-three cents, and four & 94/100 dollars attorney's fee, and of your proceedings therein you report to our said court on the first day of the next term thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of our said district court, at Niobrara Nebraska, this 1 day of December, A. D. 1891.

[SEAL.] A. L. JONES, *Clerk.*

Office of clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original order of sale in case No. 825 Farmers Loan & Trust Co. *vs.* Henry A. Root & S. ½ S. E. ¼ Sec. 22 Twp. 31, R'ge 3 West in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day
217 of July A. D. 1896.

R. H. HARRIS,

[SEAL.] *Clerk of the District Court in and for Knox County, Neb.*

Endorsed: Order of sale — court doc. 2. No. 825 page 108 Farmers Loan & Trust Co. plaintiff *vs.* S. 2-S. E. 4-22-31-3 defendant Date of judgment. Received Dec. 1st 1 p. m. A. D. 1891 John Dolphin, sheriff. Returned and filed January 5th 1892. A. L. Jones, clerk.

Return to Order of Sale.

STATE OF NEBRASKA, } ss :
Knox County, }

Received this order this 1st day of December 1891 at 2 o'clock p. m. and according to the command thereof, I summoned S. Saunders and Wm. C. Miller two disinterested residents and freeholders of said county, and administered to them an oath impartially to appraise the interest of Henry A. Root and all unknown owners defendant in said lands and tenements upon actual view thereof, and I together with said S. Saunders and Wm. C. Miller made an appraisement in writing of said lands and tenements which appraisement is herewith returned, a copy of which I forthwith deposited with the clerk of the district court of said county together with the certificate of the county clerk, clerk of the district court, and treasurer of said county, and thereupon on the 1st day of December 1891 I caused a notice to be published in the Niobrara Pioneer a newspaper printed and in general circulation in said county, that I would offer said lands for sale at the front door of the Grand Army of the Republic hall in Niobrara Knox county, Nebraska, that being the building wherein the last term of the district court of said county was held, on the 4th day of January A. D. 1892 at 11 o'clock a. m. of said day, after having so advertised the same for more than thirty days, and at
218 the time and place stated in said notice, I offered the said lands and tenements for sale at public auction, and sold the same as follows, to-wit :

S. ½ S. E. ¼ section 22, township 31, range 3 west of the 6th P. M. in Knox county, Nebraska, I first offered said land for sale in 40 acre tracts and could find no bidders therefor, and deeming it to the best interest of all parties concerned that said premises should be sold I offered the same for sale in one body and sold the same to H. S. Green of Crawford county Iowa for the sum of two hundred forty-five & no/100 dollars ($245.00) he being the highest bidder therefor and that sum being not less than two-thirds of the appraised value thereof.

Amount of principal, $49.42, Amount of interest $2.20 Att'ys' fee $4.94 Principal and interest, $56.56. Amount of proceeds of sale $245.00 Costs of court, $21.33 Costs of sale, $35.25 Total costs $56.58 Applicable upon judgment $56.56 Amount of surplus $131.86.

Given under my hand this 5th day of January A. D. 1892.

JOHN DOLPHIN,
Sheriff of Knox County.

Rec'd payment.

Items of Sheriff's Costs.

Certificates of county treasurer, county clerk and clerk of district court	$6.75
Making levy	1.00
Calling appraisers	.50
Swearing "	.50
Fees of "	2.00
Copy of appraisements	.50
Advertisements of sale	.50
Cost of publication	12.00
Making sale	1.00
Commission on sale	5.00
Return on sale	1.00
Making deed	1.00
Acknowledging deed	.50
Mileage	3.00
Total costs of sale	35.25

219 Office of clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original sheriff's return to order of sale in case No. 825 Farmers Loan & Trust Co. *vs.* Henry A. Root & S. ½ S. E. ¼ Sec. 22–Twp. 31–R'ge 3 West in my office and all endorsements thereon.

Witness my hand and seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Copy. 825.

Application of Sheriff to County Clerk, Clerk of the District Court, and County Treasurer.

To G. G. Bayha, county treasurer:

You are hereby required to certify, under your hand and official seal, the amount and character of all liens existing against the following described land, to-wit: S. ½ of S. E. ¼ sec. 22 tp. 31 r'ge 3 W. On the 2 day of Dec. 1891 as they appear in your office.

Dated this 2 day of Dec. 1891.

JOHN DOLPHIN, *Sheriff.*

The following liens appear of record in this office against the S. ½ S. E. ¼ sec. 22, twp. 31, range 3 west of the 6th P. M. in Knox county Nebr. to-wit Sold for the taxes of 1889 subsequent taxes of

1890 paid by the purchaser Amount to redeem $26.51 Taxes for the year 1891 Due and unpaid $7.67 Sold for taxes of 1880/82 at private sale Feb'y 3rd 1887, amount sold for $28.44 Sold for taxes of 1883/85 at private sale May 28/87 Amount sold for $25.95.

220 I, Geo. G. Bayha, treas. of Knox county, hereby certify that I have correctly stated above the amount and character of all liens existing against the above described lands and tenements, and also all incumbrances thereon which appear of record in my office, on the 2 day of Dec. 1891.

In witness whereof, I have hereunto set my hand and affixed my official seal this 2 day of Dec. 1891.

[SEAL.] GEO. G. BAYHA,
County Treas.

Office of the clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original county treasurer certificate in case No. 825 Farmers Loan & Trust Co. *vs.* Henry A. Root & S. ½ S. E. ¼ Sec. 22–Twp. 31–R'ge 3 West. in my office and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Copy. 825.

Application of Sheriff to County Clerk. Clerk of the District Court, and County Treasurer.

To A. L. Jones, clerk dist. court:

You are hereby required to certify under your hand and official seal the amount and character of all liens existing against the following described land, to wit: S. ½ of S. E. ¼ of sec. 22, twp. 31 r'ge 3 W. On the 2 day of Dec. 1891 as they appear of record in your office. Dated this 2 day of Dec. 1891.

JOHN DOLPHIN, *Sheriff.*

221 The following liens appear of record in this office against the above described land to-wit: Decree of foreclosure in favor of the Farmers Loan and Trust Company.

Amount of decree	$49.42
Att'ys' fees	21.33
Costs of suit	4.94

I, A. L. Jones, clerk D. C. of Knox county, hereby certify that I have correctly stated above the amount and character of all liens existing against the above described lands and tenements, and also all incumbrances thereon which appear of record in my office, on the 3 day of Dec. 1891.

[SEAL.] In witness whereof, I have hereunto set my hand and affixed my official seal this 3 day of Dec. 1891.

A. L. JONES.

Office of clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original certificate of clerk of the district court of said county, in case No. 825 Farmers Loan and Trust Co. *vs.* Henry A. Root & S. ½ S. E. ¼ Sec. 22, Twp. 31 R'ge 3 West in my office and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Copy. 825.

Application of Sheriff to County Clerk, Clerk of the District Court, and County Treasurer.

To F. Nelson, county clerk:

You are hereby required to certify, under your hand and official seal the amount and character of all liens *all* against
222 the following described land, to-wit: S. ½ of S. E. ¼ of sec. 22 tp. 31 r'ge 3 W. on the 2 day of Dec. 1891 as they appear of record in your office.

Dated this 2 day of Dec. 1891.

JOHN DOLPHIN, *Sheriff.*

The following liens appear of record in this office against the above described land, to-wit: No incumbrance.

I, F. Nelson Co. cl'k of Knox county, hereby certify that I have correctly stated above the amount and character of all liens existing against the above described lands and tenements, and also all incumbrances thereon which appear of record in my office, on the 2 day of Dec. 1891.

In witness whereof, I have hereunto set my hand and affixed my official seal this 2 day of Dec. 1891.

[SEAL.] F. NELSON, *Co. Cl'k.*

Office of clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original certificate of county clerk of said county in case No. 825, Farmers Loan and Trust Co. *vs.* Henry A. Root & S. ½ S. E. ¼ Sec. 22, Twp. 31–R'ge 3 west in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July 1896.

R. H. HARRIS,
[SEAL.] *Clerk of the District Court*
in and for Knox County, Neb.

Endorsed: Exhibit 29 O. A. W. The State of Nebraska, Knox county, *ss:* Filed this 3 day of December A. D. 1891 A. L. Jones, clerk of the dist. court.

223 EXHIBIT "30."

825. *Copy of Sheriff's Sale.*

THE FARMERS LOAN & TRUST COMPANY, Plaintiff,
vs.
HENRY A. ROOT and THE SOUTH HALF OF THE SOUTHEAST Quarter of Section Twenty-two, in Township Thirty-one, of Range Three West, of the 6th Principal Meridian in Knox County, Nebraska, and All Unknown Owners Thereof, Defendants.

By virtue of an order of sale directed to me from the clerk of the district court of Knox county, Nebraska on a judgment obtained before the Hon. Isaac Powers Jr. judge of the ninth judicial district of Knox county, Nebraska on the 10th day of November 1891 to foreclose a tax lien in favor of The Farmers Loan and Trust Company as plaintiff and against Henry A. Root and The South Half of the South-east Quarter of Section Twenty-two in Township Thirty-one of Range Three West of the 6th Principal Meridian in Knox County, Nebraska and All Unknown Owners Thereof as defendants for the sum of forty-nine dollars and forty-two cents and costs taxed at twenty-one dollars and three-three cents and four dollars and ninety-four cents attorneys' fees and accruing costs. I have levied upon the following real estate taken as the property of said defendants to satisfy said tax lien to-wit:

The south half of the south-east quarter of section twenty-two in township thirty-one of range three west of the 6th principal meridian in Knox county, Nebraska and will offer the same for sale to the highest bidder for cash in hand on the 4th day of January A. D. 1882 in front of the Grand Army of the Republic hall at Niobrara,

Nebraska, that being the building wherein the last term of court was held at the hour of 11 o'clock a. m. of said date when and where due attendance will be given by the undersigned.

Dated at Niobrara, Nebraska this 1st day of December, 1891.

5 sq. 5 W. $15.00.

224

JOHN DOLPHIN,
Sheriff of said County.

Copy of Publisher's Affidavit.

STATE OF NEBRASKA, } ss:
Knox County, }

I, Ed A. Fry being first duly sworn depose and say that I am the publisher of the Niobrara Pioneer, a weekly newspaper of general circulation printed and published in said county and that the annexed notice was published in the original body of said paper for five consecutive weeks the first publication being in the regular issue of December 4, 1891 and ending with the regular issue of January 1, 1892 and further I saith not.

ED A. FRY.

Subscribed in my presence and sworn to before me on this 4 day of January, A. D. 1892.

[SEAL.]

A. L. JONES,
Clerk of District Court.

Office of clerk of the district court, Niobrara, Neb., July 8, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true copy of the original notice of sheriff's sale in case No. 825 Farmers Loan & Trust Co. *vs.* Henry A. Root & S. ½ S. E. ¼ Sec. 22, Twp. 31 R'ge 3 West. also publisher's affidavit in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 8th day of July A. D. 1896.

[SEAL.]

R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

Endorsed: Exhibit 30, O. A. W. Copy of sheriff's sale and publisher's affidavit Received payment Ed. A. Fry.

225 EXHIBIT "Q."

Decree of Foreclosure.

FARMERS LOAN AND TRUST COMPANY, Plaintiff,
vs.
HENRY A. ROOT and S. ½ S. E. ¼, SECTION 22, TOWNSHIP 31, RANGE 3 West, Defendant-.

At a session of the district court of the State of Nebraska in and for Knox county, holden at Niobrara, in said county, on the tenth day of November, 1891, the Honorable Isaac Powers, Jr. being present and presiding in said court, the following among other proceedings were had and done, to-wit:

Be it remembered, that on this tenth day of November 1891, this cause came on to be heard before the court, the plaintiff appearing by M. J. Sweeley and S. Draper its attorneys, the defendants not appearing in person or by attorney and failing to appear plea- or answer, the plaintiff demands a default against the defendants Henry A. Root and The South Half of the South-east Quarter of Section Twenty-two Township 31 Range 3 West of the 6th P. M. in Knox County, Nebr. for want of appearance, plea or answer, and also that decree be entered in this cause against the defendants as prayed for in the petition. The court finds that due and legal notice of the filing and pendency of this action was given the said defendants, and that they have failed to appear and plead in said cause in the time and manner provided for by law and said defendants, being three times solemnly called in open court, and still failing to answer, demur or otherwise plead, are adjudged to be in default. A default is therefore hereby entered against the defendants, and each of them, viz: Henry A. Root and South Half of the South-east Quarter of Sec. 22, Township 31 Range 3 West of the 6th P. M. in Knox County, Nebr. said cause having been duly submitted to the court,
226 upon the pleadings and evidence, and the court having fully considered the same, the court finds that the plaintiff purchased at a legal tax sale held in said county of Knox and State of Nebraska on the — day of —— 188– for the taxes due thereon the following described real estate situate in the county of Knox and State of Nebraska, to-wit: South half of the south-east quarter of section twenty-two, township 31 range 3 west of the 6th P. M. in Knox county, Nebr. and that said *said* taxes are a first lien on said described land, and paramount and superior to any right, title, lien, or interest in, to or against the same of any of the defendants in this action or any other person. The court also finds that the plaintiff is the owner of the tax certificate of sale, as set forth in plaintiff's petition and that said plaintiff is entitled to a decree foreclosing said lien for the amount due upon said taxes. The court also finds that there is due the plaintiff upon the tax sale and payments set forth in the petition, the sum of $49.42 together with the sum of $4.94 att'ys' fees as is provided by statute.

It is therefore considered adjudged and decreed by the court, that in case the defendants fail for twenty days from the entry of this decree to pay or cause to be paid to the plaintiff the sum of $54.36 so found due with interest thereon at the rate of ten per cent. per annum from the date hereof together with the costs of this action taxed at $21.33, that the defendants be foreclosed of all equity of redemption, or other interests in said premises; that said premises be sold and an order of sale shall be issued to the sheriff of Knox county, Nebraska, commanding him to sell the above described premises, as upon execution, and bring the proceeds thereof into court, to be applied in satisfaction of the sums so found due, in the order of their priority, as above found, and costs upon the confirmation of said sale.

—— ——,
Judge of the District Court.

227 EXHIBIT "R."

In the District Court of Knox County, Nebraska.

THE FARMERS LOAN & TRUST COMPANY }
vs. }
—— ——. }

The following decrees of confirmation includes all the following cases: No. 804, 806, 809, 813, 814, 819, 820, 821, 825, 826, 827, 833, 835, 837, 843, 846, 851.

Be it remembered that on the 23rd day of April, 1892, the same being the 5th judicial day of the regular April 1892 term of this court this cause coming on for final hearing on the sale of real estate heretofore to-wit, on the — day of January, 1892, made by John Dolphin, sheriff, pursuant to the decree and order of sale herein the court therefore having carefully examined the proceedings of said officer under such order of sale finds that all of such proceedings are regular and valid and is satisfied of the legality of such sale and that the same has been in all respects made in conformity to law and particularly to the provisions of title fourteen of the Code of Civil Procedure of the State of Nebraska. It is therefore ordered, adjudged and decreed by the court that said sale be and the same is hereby approved and confirmed and the sheriff of said county of Knox, Nebraska is ordered to execute to the purchaser of said land a deed thereto and the clerk of this court is directed to make this entry upon the journal of this court.

Recorded in Journal 3 at page 149 records of Knox Co., Neb.

EXHIBIT "31."

In the District Court in and for Knox County, Nebraska.

HENRY A. ROOT, Plaintiff,
vs.
ALGERNON S. PATRICK, MATTHEWSON T. Patrick, and Davis Armstrong, Sheriff, Defendants. } Petition in Equity.

228 Now comes the said plaintiff by Robert W. Patrick his attorney and for cause of action against the said defendants shows to the court; 1st That on or about the seventh (7th) day of October A. D. 1880 the said plaintiff purchased from one Erwin Davis of the city of New York and State of New York and on the said day the said Davis by deed of general warranty a copy of which is hereunto annexed and hereby made a part hereof conveyed to this plaintiff the following described real estate to-wit:

The north half of section four (4) township thirty-one (31) north of range three (3) west, and the north half of the north-east quarter and the east half of the south-east quarter of section nine (9) and the south-west quarter of section twenty-five (25) in township thirty-one (31) north all of range three (3) west of the sixth principal meridian and the east half of section thirty-four in township (30) north of range two (2) west and the south half of the south-west — of section two (2) and the north half of the north-west quarter of section eleven (11) and the south-west quarter of the south-west quarter of section eleven (11) and the northeast quarter of section (13) and the south-west quarter of section (15) in township thirty-one (31) north of range two (2) west, and the south-east quarter of section thirty (30) and the west half of the south-west quarter of section thirty (30) and the north-west quarter of section thirty-five (35) in township thirty (30) north all of range two (2) west, and the north half of section nineteen (19) and the south-west quarter of section nineteen (19) and the M. north-west quarter of section eighteen (18) and the north-east quarter of section thirty-one (31) in township thirty-one (31) north of range three west, and the south-east quarter of section twenty-five (25) and the south-west quarter of section four (4) and the north-east quarter of section two (2) and the north-east quarter of the south-west quarter and
229 the west half of the south-wes- — of section two (2) and the north-west quarter of the south-west quarter of section two (2) and the north half of the south-east quarter of section three and in township twenty-nine (29) north of range three west and the south half of section fifteen (15) and the north-west quarter of section twenty-two (22) and the north half of the south-west quarter and the north half of the north-east quarter of section twenty-two (22) in township thirty-one (31) north of range three west and the east half of section eight (8) in township thirty (30) north of range two (2) west and the west half of the northwest quarter and the west half of

the southwest — of section thirty-three 33 in township thirty-one (31) north of range two (2) west and the south half of section (9) in township thirty (30) north of range two (2) west and all of section thirty-two (32) in township thirty-one (31) north of range two (2) west and the west half of the north-west quarter of section seven (7) in township twenty-nine (29) north of range three (3) west and the south half of section thirty-two (32) in township thirty (30) north of range three west and the west half of section twenty-nine (29) and the south half of section thirty-one (31) in township thirty-one (31) north of range three (3) west and the south half of the south-west quarter and the south half of the south-east quarter of section twenty-two (22) and the north half of section twenty-seven (27) and the south-west quarter and the north-east quarter of section twenty (20) and the north-east quarter and the south-west quarter and the southeast quarter of section seventeen (17) all in township thirty-one (31) north of range three (3) west and the north half of the north-west quarter of section four (4) and the north-east quarter of section four (4) and the north half of the north-west quarter
230 of section eight (8) and the north-east quarter of section twelve (12) and the north-east quarter and the south-west quarter of section six (6) in township twenty-nine (29) north of range three (3) west and the east half of the south-west quarter and the west half of the southeast quarter of section nine (9) in township thirty-one (31) north of range three (3) west all in the county of Knox and State of Nebraska.

2nd. On the 24th day of November A. D. 1880 the defendants Algernon S. Patrick and Matthewson T. Patrick commenced in this court their certain suit against the said Erwin Davis and as a part of the proceedings of the said suit sued out of the said court its writ of attachment against the property of the said Erwin Davis situated in the State of Nebraska which said writ of attachment was on the 1st day of Dec. A. D. 1880, levied by the said sheriff upon the aforedescribed property as the property of the said Davis which said writ of attachment is still in force and effect.

3rd. On the 28th day of December A. D. 1882 and after the levy of the said writ of attachment as aforesaid the said deed was filed for record in the office of the county clerk of Knox county and the same was duly filed of record in the same county.

Wherefore the said plaintiff prays that he may have the decree of this court declaring that the said lien is not a clound upon the title of this plaintiff and that the lands herein described are not held by the said attachment, and for such other and further relief as he may be in equity and good conscience entitled to.

HENRY A. ROOT,
By ROBERT W. PATRICK,
His Attorney.

231 STATE OF NEW YORK, } ss:
County of New York, }

Henry A. Root of lawful age being first duly sworn deposes and says that he is the plaintiff in the above entitled case, that he has read the petition herein and the same is true.

HENRY A. ROOT.

Subscribed in my presence and sworn to before me this 1st day of November A. D. 1886.

ED W. STARR,
Notary Public, Kings County.

Certificate filed in New York county.

STATE OF NEW YORK, } ss:
City and County of New York, }

I, James A. Flack clerk of the city and county of New York and also clerk of the supreme court of the said city and county being a court of record do hereby certify that Edr. W. Starr has filed in the clerk's office of the county of New York a certified copy of his appointment as notary public for the county of Kings with his autograph signature and was at the time of taking the annexed deposition duly authorized to take the same and that I am well acquainted with the hand writing of said notary public and verily believe that the signature to the annexed certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county this 2nd day of November 1886.

[SEAL.] JAMES A. FLACK, *Clerk.*

232 Endorsed: In the district court Knox county, Root vs. Patrick, Petition Filed Oct. 12th 1887 F. Nelson clerk. Robert W. Patrick pl't'f att'y.

Erwin Davis }
to
Henry A. Root. }

This indenture made the seventh day of October in the year of our Lord one thousand eight hundred and eighty between Erwin Davis party of the first part and Henry A. Root party of the second part witnesseth, that the said party of the first part for and in consideration of the sum of forth-four thousand dollars lawful money of the United States of America to him in hand paid by the said party of the second part at or before the ensealing and delivery of these presents the receipt whereof is hereby acknowledged hath granted bargained sold aliened release- and confirmed and by these presents doth grant bargain sell alien remise convey and confirm unto the said party of the second part and to his heirs and assigns forever all these certain tracts or parcels of land lying being

and situated in the county of Knox and State of Nebraska and bounded and described as follows viz: The north half of section four township thirty-one north of range three west and north half of the north east quarter and the east half of the south-east quarter of section nine and the south-west quarter of section twenty-five in township thirty-one north all of range three west of the sixth principal meridian and the east half of section thirty-four in township thirty north of range two west and the south half of the south-west quarter of section two and the north half of the north-west quarter of section eleven and the south-west quarter of south-west quarter of section 11 and the north-east quarter of section thirteen and the south-west quarter of section fifteen in township thirty-one north of
233 range two west and the south-east quarter of section thirty and the west half of the south-west quarter of section thirty- and the north-west quarter of section thirty five in township thirty north all of range two west and the north half of section nineteen and the south-west quarter of section nineteen and the north-west quarter of section twenty and the west half of section eighteen and the north-east quarter of section thirty-one and in township thirty-one north of range three west and the south-east quarter of section thirty-one and in township thirty-one north of range three west and the south-east quarter of section five and the south-west quarter of section four and the north-east quarter of section two and the north-east quarter of the south-west quarter and the west half of the south-west quarter of section two and the north-west quarter of the south-east quarter of section two and the north half of the south-east quarter of section three in township twenty-nine north of range three west and the south half of section fifteen and the north-west quarter of section twenty-two (22) and the north half of the south-west quarter and the north half of the north-east quarter of section twenty-two in township thirty-one north of range three west and the east half of section eight in township thirty north of range two west and the west half of the north-west quarter and the west half of the south-west quarter of section thirty-three in township thirty-one north of range two west and the south half of section nine in township thirty north of range two west and all of section thirty-two in township thirty one due north of range two west and the north-west quarter of section seven in township twenty-nine north of range three west and the south half of section thirty-two in township thirty north of range three west and the west half of section twenty-seven and the south half of section thirty-one in township thirty-one north of range three west and the *and the* south half of the south west quarter and the south half of the south-east quarter of section
234 twenty-two and the north half of section twenty-seven and the south-west quarter and the north-east quarter of section twenty and the north-east quarter of the south-west quarter and the south-east quarter of section seventeen all in township thirty-one north of range three west and the north half of the north-west quarter of section four and the north-east quarter of section four and the north half of the north-west quarter of section eight and the north-east quarter of section twelve and the north-east quarter and the

south-west quarter of section six in township twenty-nine north of range three west and the east half of the south-west quarter and the west half of the south-east quarter of section nine in township thirty-one north of range three west together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining and the reversion and reversions, remainders and remainders, rents issues, and profits thereof and also all the estate right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity of the said party of the first part of in or to the above described premises and every part and parsel thereof with the appertenances to have and to hold all and singular the above mentioned and described premises with appertenances unto the said party of the second part his heirs or assigns forever.

In witness whereof the said party of the first part hereunto set his hand and seal the day and year first above written.

ERWIN DAVIS.

In presence of

——— ———.

Page 2. West erased before ex.
E. L. GREENWOOD.

Lien 20.

STATE OF NEW YORK, } ss:
City & County of New York, }

On this eight- day of October A. D. 1880 before me a notary public of the State of New York and impowered to take affidavits
235 and acknowledgements in the city and county of New York personally come Erwin Davis to me personally known and known to me to be the identical person described in and who executed the foregoing deed as grantor and he acknowledged before me that he executed the same and also before me acknowledged the same to be his voluntary act and deed.

[SEAL.] EDWARD L. GREENWOOD,
Notary Public, Kings County.

Certificate filed in New York county.

THE STATE OF NEBRASKA, } ss:
County of Knox, }

I, Frank Nelson county clerk and *ex officie* recorder of Knox county do hereby certify that the within is a true and correct copy of the deed given by Erwin Davis to Henry A. Root and filed for record in my office December 28, 1882 2 p. m. and recorded in Book E, page 149 of deeds.

Given under my hand and seal of said office this 12th day of October A. D. 1887.

FRANK NELSON,
[SEAL.] *County Clerk,*
By H. WESTERMAN, *Deputy.*

11022

Copy.

Precipe.

In the District Court of Knox County, Nebraska.

HENRY A. ROOT, Pl'ff,
vs.
ALGERNON S. PATRICK, MATTHEWSON T. PATRICK, Davis Armstrong, Sheriff, Defendants. } Precipe.

To the clerk of said court:

236 Please issue summons in the above entitled cause and deliver same to sheriff of said county one for Davis Armstrong returnable as usual.

PATRICK & MARKLEY,
Att'y. for Pl'ff.

Endorsed: Copy Precipe Filed Oct. 18th 1887. F. Nelson.

Copy.

Summons.

District Court.

THE STATE OF NEBRASKA, *Knox County,* } ss:

The State of Nebraska to the sheriff of said county, Greeting:

You are hereby commanded to notify Davis Armstrong defendant that he has been sued by Henry A. Root in the district court for said county that unless he answer by the 21st day of November A. D. 1887 the petition of said plaintiff against him filed in the clerk's office of said court, such petition will be taken as true, and judgment rendered accordingly. You will make due return of this summons on the 31st day of October A. D. 1887.

Witness my hand and seal of said court, at Niobrara this 19th day of October A. D. 1887.

[SEAL.] F. NELSON, *Clerk.*

Endorsed: Received October 22 1887 Carl Witte, sheriff Returned and filed Oct. 31st, 1887. F. Nelson clerk.

THE STATE OF NEBRASKA, *Knox County,* } ss:

I hereby certify that on the — day of —— 189– I served the within writ of summons on the within named —— —— Niobrara Knox Co. Neb. Received the within October 22nd 1887 and on the 25th day of October 1887 I served the same on the within named Davis

Armstrong by delivering to him personally a true and cor-
237 rect copy of this writ with all the endorsements thereon as required by law, in Knox Co. Nebr.

CARL WITTE, *Sheriff.*

Fees.

Service and return	.50
Copy	.25
Mileage	$3.00
Total	3.75

CARL WITTE, *Sheriff.*

Copy.

Affidavit.

In the District Court of Knox County, Nebraska.

HENRY A. ROOT, Plaintiff,
vs.
ALGERNON S. PATRICK, MATTHEWSON T. PATRICK, and DAVIS *S*rmstrong, Sheriff, Defendants.

Henry A Root plaintiff in the above entitled action by John R. Merkley attorney for said plaintiff being first duly sworn deposes and says that on the 12th day of October 1887 he filed a petition in the district court of Knox county against Algernon S. Patrick, Matthewson T. Patrick and Davis Armstrong, sheriff, the object and prayer of which is to discharge an attachment in favor of the defendants against the property of said plaintiff which said lands are fully described in said plaintiff's petition as follows, to wit:

The N. ½ sec. 4 tp. 31 N. of rge. 3 W. and the N. ½ of the N. E. ¼ and the E. ½ of the S. E. ¼ of sec. 9, and the S. W. ¼ of sec. 25 in tp. 31 N. all of rge. 3 W. of the 6th principal meridian and the E. ½ of sec. 34 in tp. 30 N. of rge. 2 W. and the S ½ of S. W. of sec. 2 and N. ½ of N. W. ¼ sec. 11 and S. W. ¼ of S. W. ¼ sec. 11 and N. E. ¼ of sec. 13 and
A. W. ¼ sec. 15 in tp. 31 of rge. 2 W. and S. E. ¼ sec. 30 and W. ½
238 of S. W. ¼ of sec. 30 and N. W. ¼ sec. 35 in tp. 30 N. all of rge. 2 W. and the N. ½ sec. 19 and the S. W. ¼ sec. 19 and N. W. ¼ sec. 20 and the W. ½ sec. 18 and the N. E. ¼ sec. 31 in tp. 31 N. of rge. 3 W. and S. E. ¼ sec 25 and S. W. ¼ sec. 4 and N. E. ¼ sec. 2 and N. E. ¼ of S. W. ¼ and W. ½ of S. W. ¼ sec. 2 and N. W. ¼ of S. E. ¼ sec. 2 and N. ½ S. E. ¼ sec. 3 and in tp. 29 N. of rge. 3 W. and S. ½ sec. 15 and N. W. ¼ sec. 22 and N. ½ of S. W. ¼ and N. ½ of N. E. ¼ sec. 22 in tp. 31 N. of rge. 3 W. and the E. ½ sec. 8 in tp. 30 N. of rge. 2 W. and W. ½ of N. W. ¼ and W. ½ S. W. ¼ sec. 33 in tp. 31 N. of rge. 2 W. and S. ½ sec. 9 in tp. 30 N. of rge. 2 W. and all of sec. 32 in tp. 31 N. of rge. 2 W. and N. ½ of N. W. ¼ sec. 7 in tp. 29 N. of rge. 3 W. and S. ½ sec. 32 in tp. 30 N. of 3 W. and W. ½ sec. 29

and S. ½ sec. 31 in tp. 31 N. of rge. 3 W. and S. ½ S. W. ¼ and S. ½ S. E. ¼ sec. 22 and N. ½ sec. 27 and S. W. ¼ N. E. ¼ sec. 20 and N. E. ¼ and S. W. ¼ and S. E. ¼ sec. 17 all in tp. 31 N. of rge. 3 W. and N. ½ N. W. ¼ sec. 4 and N. E. ¼ sec. 4 and N. ½ N. W. ¼ sec. 8 and N. E. ¼ sec. 12 and N. E. ¼ and S. W. ¼ sec. 6 in tp. 29 on rge. 3 W. and E. ½ S. W. ¼ and W. ½ of S. E. ¼ sec. 9 in tp. 31 on rge. 3 W. All in Knox county, and State of Nebraska.

And that it be ceclared by the court not a lien upon said land and that defendants' lien be declared not a cloud upon the said lands of said plaintiff. Affidavit further states that said defendants are *now* residents and service of summons cannot be made with- this State upon either of them.

Wherefore plaintiff prays for service upon said defendants by publication.

JOHN A. MARKLEY.

Subscribed in my presence and sworn to before me on this 12th day of October 1887.

F. NELSON,
[SEAL.] *Clerk Dist. Court.*

239 Endorsed: Filed Oct. 14, 1887. F. Nelson clerk. 4 O. K. Copy. In the district court of Knox county, Nebraska. Henry A. Root plaintiff, Algernon S. Matthewson T. Patrick and Davis Armstrong, sheriff defendants.

Said defendant-, Algernon S. Patrick, Matthewson T. Patrick, will take notice that on the 12th day of October 1887 Henry A. Root plaintiff herein filed his petition in the district court of Knox county against said defendants the object and prayer of which is to discharge an attachment in favor of the defendants, against the property of said plaintiff which said lands are fully described in said plaintiff'- petition as follows to-wit: The N. ½ sec. 4 tp. 31 N. of rge. 3 W. and the N. ½ of the N. E. ¼ and the E. ½ of the S. E. ¼ of sec. 9 and the S. W. ¼ of sec. 25 in tp. 31 N. all of rge. 3 W. of the 6th principal meridian, and the E. ½ of sec. 34 in tp. 30 N. of rge. 2 W. and the S. ½ of S. W. — of sec. 2 and N. ½ of N. W. ¼ sec. 11 and S. W. ¼ of S. W. ¼ sec. 11 and N. E. ¼ of sec. 13 and S. W. ¼ sec. 15 in tp. 31 N. of rge. 2 W. and S. E. ¼ sec. 30 and W. ½ of S. W. ¼ of sec. 30 and N. W. ¼ sec. 35 in tp. 30 N. all of rge. 2 W. and the N. ½ sec. 19 and the S. W. ¼ sec. 19 and N. W. — sec. 20 and the W. ½ sec. 18 and the N. E. ¼ sec. 31 in tp. 31 N. of rge. 3 W. and S. E. ¼ sec. 25 and S. W. ¼ sec. 4 and N. E. ¼ sec. 2 and N. E. ¼ of S. W. ¼ and W. ½ of S. W. ¼ sec. 2 and N. W. ¼ of S. E. ¼ sec. 2 and N. ½ S. E. ¼ sec. 3 and in tp. 29 N. of rge. 3 W. and S. ½ sec. 15 and N. W. ¼ sec. 22 and N. ½ of S. W. ¼ and N. ½ of N. E. ¼ sec. 22 in tp. 31 N. of rge. 3 W. and the E. ½ sec. 8 in tp. 30 N. of rge. 2 W. and W. ½ of N. W. ¼ and W. ½ S. W. ¼ sec. 33 in tp. 31 N. of rge. 2 W. and S. ½ sec. 9 in tp. 30 N. of rge. 2 W. and all of sec. 32 in tp. 31 N. of rge. 2
240 W. and *and* W. ½ of N. W. ¼ sec. 7 in tp. 29 N. of rge. 3 W. and S. ½ sec. 32. in tp. 30 N. of 3 W. and W. ½ sec. 29 and S.

¼ sec. 31 in tp. 31 N. of rge. 3 W. and S. ½ of S. W. ¼ and S. ½ S. E. ¼ sec. 22 and N. ½ sec. 27 and S. W. ¼ N. E. ¼ sec. 20 and N. E. ¼ and S. W. ¼ and S. E. ¼ sec. 17 all in tp. 31 N. of rge. 3 W. and N. ½ N. W. ¼ sec. 4 and N. E. ¼ sec. 4 and N. ½ N. W. ¼ sec. 8 and N. E. ¼ sec. 12 and N. E. ¼ and S. W. ¼ sec. 6 in tp. 29 N. of rge. 3 W. and E. ½ S. W. ¼ and W. ½ S. E. ¼ sec. 9 in tp. 31 N. of rge. 3. W. all in the county of Knox and State of Nebraska.

You are required to answer said petition on or before Monday the 21st day of November, 1887.

HENRY A. ROOT, *Plaintiff.*
By ROBERT W. PATRICK AND
JOHN R. MARKLEY,
His Attorneys.

Affidavit of Publication.

STATE OF NEBRASKA, } ss:
County of Knox, }

I, Frank L. Sullivan do solemnly swear that I am the publisher of the Knox County Democrat a weekly newspaper of general circulation published once a week at Niobrara Knox Co. Nebraska the notice attached hereto and which is a part of this affidavit and a part of the proof of Henry A. Root was published in said newspaper for 6 consecutive weeks the first publication having been made on the 13th day of October 1887 and the last on the 17th day of Nov. 1887 that said notice was published in the regular and entire issue of every number of the paper during the period and time of publication and that the notice was published in the newspaper proper and not in a supplement.

FRANK L. SULLIVAN.

Subscribed and sworn to before me this 22nd day of November *this 22nd day of November*, 1887.

[SEAL.] JOHN L. SANTER,
Notary Public.

241 In the District Court of Knox County, Nebraska.

HENRY A. ROOT, Plaintiff,
vs.
ALGERNON S. PATRICK, MATTHEWSON T. PATRICK, and DAVIS Armstrong, Sheriff, Defendants.

Said defendants Algernon S. Patrick and Matthewson T. Patrick will take notice that on the 12th day of October 1887 Henry A. Root plaintiff herein filed his petition in the district court of Knox county against said defendant-, the object and prayer of which is to discharge an attachment in favor of the defendants against the property of said plaintiff which said lands are fully described in said plaintiff's petition as follows, to wit: The N. ½ sec. 4 tp. 31 N. of rge. 3 W. and the

N. ½ of the N. E. ¼ and the E. ½ of the S. E. ¼ of sec. 9 and the S.W. ¼ of sec. 25 in tp. 31 N. all of rge. 3 W. of the sixth (6th) principal meridian and the E. ½ of sec. 34 in tp. 30 N. of rge. 2 W. and the S. ½ of S. W. — of sec. 2 and N. ½ of N. W. ¼ sec. 11 and S. ½ of S. W. ¼ sec. 11 and N. E. ¼ of sec. 13 and S. W. ¼ sec. 15 in tp. 31 N. of rge. 2 W. and S. E. ¼ sec. 30 and W. ½ of S. W. ¼ of sec. 30 and N. W. ¼ sec. 35 in tp. 30 N. all of rge. 2 W. and the N. ½ sec. 19 and the S. W. ¼ sec. 19 and N. W. ¼ sec. 20 and the N. ½ sec. 18 and the N. E. ¼ sec. 31 in tp. 31 N. of rge. 3 W. and S. E. ¼ sec. 25 and S. W. ¼ sec. 4 and N. E. ¼ sec. 2 and N. E. ¼ of S. W. ¼ and W. ½ of S. W. ¼ sec. 2 and N. W. ¼ of S. E. ¼ sec. 2. and N. ½ — E. ¼ sec. 3 and in tp. 29 N. of rge. 3 W. and S. ½ sec. 15 and N. W. ¼ sec. 22 and N. ½ of S. W. ¼ and N. ½ of N. E. ¼ sec. 22 in tp. 31 N. of rge. 3 W. and the E. ½ sec. 8 in tp. 30 N. of rge. 2 W. and W. ½ of N. W. ¼ and W. ½ S. W. ¼ sec. 33
242 in tp. 31 N. of rge. 2 W. and S. ½ sec. 9 in tp. 30 N. of rge. 2 W. and all of sec. 32 in tp. 31 N. of rge. 2 W. and S. ½ sec. 9 in tp. 30 N. of rge. 3 W. and S. ½ sec. 32 in tp. 30 N. of 3 W. and W. ½ sec. 29 and S. ½ sec. 31 in tp. 31 N. of rge. 3 W. and S. ½ S. W. ¼ and S. ½ S. E. ¼ sec. 22 and N. ½ sec. 27 and S. W. ¼ N. E. ¼ sec. 20 & N. E. ¼ and S. W. ¼ and S. E. ¼ sec. 17 all in tp. 31 N. of rge. 3 W. and N. ½ N. W. ¼ sec. 4 and N. E. ½ sec. 4 and N. ½ N. W. ¼ sec. 8 and N. E. ¼ sec. 12 and N. E. ¼ and S. W. ¼ sec. 6 in tp. 29 N. rge. 3 W. and E. ½ of S. W. ¼ and W. ½ of S. E. ¼ sec. 9 in tp. 31 N. of rge. 3 W. all in the county, of Knox and State of Nebraska.

You are required to answer said petition on or before Monday the 21st day of November, 1887.

HENRY A. ROOT, *Plaintiff*,
By ROBERT W. PATRICK AND
JOHN R. MARKLEY,
His Attorneys.

Endorsed: Filed Oct. 14th 1887, F. Nelson, clerk.

Copy. 228.

HENRY A. ROOT
vs.
ALGERNON S. PATRICK and MATT-EWSON T. PATRICK and Davis Armstrong, Sheriff. } Decree.

Now on this 23rd day of November 1887 it being of the regular adjourned October 1887 term of our said court this cause came on to be heard, whereupon the court finds: that due and legal service in this action has been had upon the defendants Algernon S. Patrick and Matthewson T. Patrick by publication and upon Davis Armstrong by personal service of summone and now come plaintiff by his attorney John C. Markley and the defendant Davis Armstrong by his attorney Solomon Draper and the defendants Algernon
243 S. Patrick and Matthewson T. Patrick having failed to appear or plead are by the court adjudged to be in default, and this cause coming on further to be heard upon the pleadings and evi-

dence of the plaintiff the court finds that the attachment heretofore sued out of the district court of Knox county, Nebraska by the defendants Algernon S. Patrick and Matthewson T. Patrick respectively in two certain actions there pending therein wherein the said Algernon S. Patrick and Matthewson T. Patrick respectively were plaintiffs and one Erwin Davis was defendant, and which said attachments were or about the 5th day of Dec. 1880 by the defendant Davis Armstrong then sheriff of said county, levied upon the following lands in said county to-wit: N. ½ sec. 4 tp. 31 rge. 3 W. N. ½ of N. E. ¼ and E. ½ S. E. ¼ sec. 9 and S. W. ¼ sec. 25 tp. 31 all of rge. 3 W. of the 6th P. M. and the E. ½ sec. 34 tp. 30 rge. 2 W. and the S. ½ S. W. ¼ of S. W. ¼ sec. 11 and N. E. ¼ sec. 13 and S. W. ¼ sec. 15 in tp. 31 rge. 2 W. and S. E. ¼ sec. 30 and W. ½ of S. W. ¼ of sec. 30 and N. W. ¼ sec. 35 in tp. 30 all of rge. 2 W. and the N. ½ sec. 19 and S. W. ¼ sec. 19 and N. W. ¼ sec. 29 and the W. ½ sec. 13 and the N. E. ¼ sec. 31 in tp. 31 rge. 3 W. and S. E. ¼ sec. 25 and S. W. ¼ sec. 4 and N. E. ¼ of sec. 2 N. E. ¼ of S. W. ¼ and W. ½ of S. W. ¼ sec. 2 and N. W. ¼ of S. E. ¼ sec. 2 and N. ½ S. E. ¼ sec. 3 and in tp. 29 rge. 3 W. and S. ½ sec. 15 and N. W. ¼ sec. 22 and N. ½ of S. W. ¼ and N. ½ of N. E. ¼ sec. 22 in tp. 31 rge. 3 W. and the E. ½ sec. 8 in tp. 30 of rge. 2 W. and W. ½ of N. W. ¼ and W. ½ S. W. ¼ sec. 33 in tp. 31 rge. 2 W. and S. ½ sec. 9 in tp. 30 rge. 2 W. and all of sec. 32 in tp. 31 rge. 2 W. and W. ½ of N. W. ¼ sec. 7 in tp. 29 rge. 3 west and S. ½ sec. 32 in tp. 30 rge. 3 *M.* and W. ½ sec. 29 and S. ½ sec. 31 in tp. 31 rge. 3 W. and S. ½ S. W. ¼ and S. ½ S. E. ¼ sec. 22 and N. ½ sec. 27 244 and S. W. ¼ N. E. ¼ sec. 20 and N. E. ¼ and S. W. ¼ and S. E. ¼ sec. 17 all in tp. — rge. 3 W. and N. ½ S. W. ¼ sec. 4 and N. E. ¼ sec. 4 and N. ½ N. W. ¼ sec. 8 and N. E. ¼ sec. 12 and N. E. ¼ and S. W. ¼ sec. 6 in tp. 29 rge. 3 W and E. ½ S. W. ¼ and W. ½ of S. E. – sec. 9 in tp. 31 of rge. 3 W. all in the county of Knox and State of Nebraska.

The said action in which said attachments were *suit* out having been commenced in said court on or about the 24th day of November 1880. The court further finds that at the time of commencement of said actions and the suing out and levying of said attachment the said Erwin Davis was not the owner thereof and had no interest therein, but that in fact, at said time the said plaintiff herein was the owner in fee thereof That said attachment constitutes no lien or charge upon said lands or any part thereof but is simply a cloud on the plaintiff's title thereto.

It is therefore considered and adjudged by the court that said attachment be and the same is hereby discharged and declared to be no lien or charge upon said lands or any part thereof and that the cloud cast thereon by said attachments be and the same is hereby removed and that the plaintiff recover his costs of and from the defendants, Algernon S. Patrick, and Matthewson T. Patrick.

Office of clerk of the district court, Niobrara, Neb., July 23, 1896.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, clerk of the district court, in and for Knox county, Nebraska, do hereby certify that the above — foregoing is a true
245 and complete copy of the original papers and proceedings and finding of said court in a certain case in said court wherein Henry A. Root was plaintiff and Algernon S. Patrick Matthewson T. Patrick and Davis Armstrong sheriff, were defendants and being composed of pages 1 to 18 inclusive (now on file) in my office, and all endorsements thereon.

Witness my hand and the seal of said court this 23rd day of July A. D. 1896.

[SEAL.] R. H. HARRIS,
Clerk of the District Court in and for Knox County, Neb.

EXHIBIT "32." EXHIBIT "33."

In the District Court of the Ninth Judicial District of Nebraska in and for Knox County.

ALVIN L. LEIGH, Plaintiff, }
vs. } Stipulation.
H. S. GREEN, Defendant. }

An error having occurred in the deposition of J. N. H. Patrick in the above entitled action, it is hereby stipulated that in the 4th paragraph thereof put by Judge Crawford, namely "Where did you reside during the whole of the year 1887" the word "you" may be changed to "they," and in the answer immediately following the word "I" be changed to "they." It is also agreed that in the question next following, the full names Algernon S. Patrick and Matthewson T. Patrick be understood as used instead of the initials "A. S." and "M. T."

JAMES M'CABE,
Of Counsel for H. S. Green.

In the District Court of the Ninth Judicial District of Nebraska in and for Knox County.

246 ALVIN L. LEIGH, Plaintiff,
vs.
H. S. GREEN, Defendant.

Deposition of witness taken before me, Fannie M. Pratt, a notary public in and for Douglas county, in the State of Nebraska, to be used in an action wherein Alvin L. Leigh is plaintiff and H. S. Green is defendant, pending in the district court of the ninth judicial district of the State of Nebraska in and for Knox county, in pursuance of the annexed notice and at the time and place stated.

The plaintiff appeared by Hon. J. C. Crawford his attorney, and the defendant by James McCabe his attorney, and thereupon the plaintiff produced the following witnesses in their order, to-wit:

J. N. H. PATRICK being by me first duly sworn, testifies as follows:

Examined in chief by Judge CRAWFORD:

Q. What is your name, residence and occupation?
A. J. N. H. Patrick, Omaha; occupation, I haven't any.
Q. Where have you resided for the last 30 or 35 years?
A. In Omaha, or in Douglas county, rather; have resided in Douglas county for the last 40 years.
Q. Are you acquainted with A. S. Patrick and M. T. Patrick?
A. They are my brothers.
Q. Where did you reside during the whole of the year 1887?
A. I resided in Omaha.
Q. Mr. Patrick, you remember that some time in 1887 there was an action in attachment commenced by Erwin Davis against A. S. Patrick and I think M. T. Patrick in the district court in Knox county?
247 A. Commenced by A. S. Patrick and M. T. Patrick against Davis you mean don't you?
Q. Yes, by the Patricks against Davis; when was that, in 1887?
A. Yes, about that time.
Q. An attachment against all Davis lands in Knox county?
A. Yes.
Q. Do you remember anything about a deed that was given about the same time purporting to have been dated on the 7th of October 1880 given by Erwin Davis to Henry A. Root for the same lands?

To which question and the answer thereto, the defendant objected as incompetent, irrelevant and immaterial, which objection was overruled; to which the defendant excepted.

A. I understood that there was a deed of that kind given and when I was in New York shortly afterwards I asked Root how they managed to ante-date that deed so as to be dated before the second attachment and he replied that they had a way of doing that in New York. Then, I said, but how did you get a notary? Oh, he says we can manage those things very easy in New York.

Q. Did you have any conversation with Henry A. Root about the execution and delivery of the deed from Erwin Davis to him for lands in Knox county which had been attached in the suit of Patrick *v.* Davis as to the date of its execution and delivery? If so, what did he say.

To which question and the answer thereto, the defendant objected as incompetent, irrelevant and immaterial, which objection was overruled; to which the defendant excepted.

A. I have just given you an answer to that.

Q. You may state it again.

To which question and the answer thereto, the defendant objected as incompetent, irrelevant and immaterial, which objection was overruled; to which the defendant excepted.

248 A. When I met Root the next time I was in New York, and shortly after this deed was executed and I saw its effect was to defeat the second attachment I asked him how he managed to have it acknowledged and ante-date the attachment and he said they could manage that thing very easy in New York, they had a way of doing it.

Q. Is that all the conversation you had in regard to ante-dating the deed?

A. Yes, with him, yes.

Q. Who was present?

A. No one was present.

Q. You have no other evidence then from him except that he stated it was ante-dated?

A. That is all I had from him.

Q. I will ask you if you ever had any conversation with Erwin Davis who deeded the lands in question to Henry A. Root about the making and delivery of the deed and the date thereof; if so you may state it.

To which the defendant objected as incompetent, irrelevant and immaterial, which objection was overruled; to which the defendant excepted.

A. Yes, I had conversations with Mr. Davis about it; that he deeded the land to Root for the purpose of defeating this second attachment and he thought it would do it.

Q. Did he say whether or not the deed was ante-dated?

A. Don't remember that.

By McCABE:

Q. What was Mr. Root's business?

A. He was a lawyer in New York city and nephew of Mr. Davis and Mr. Davis' confidential man.

Q. He was then and now is a lawyer of great prominence in that State?

249 A. He does not live in New York no sir, he never was of any prominence. Last I heard of him he was in Montana mining. This man never had any prominence as a lawyer.

(Signature of witness waived by the parties.)
(Here follow certificate of notary and notice attached.)

EXHIBIT "34."

In the District Court of the Ninth Judicial District of Nebraska in and for Knox County.

JAMES C. CRAWFORD ET AL., Plaintiffs,
vs.
GEORGE W. STACKS, Defendant. } (Caption.)

The plaintiffs appeared in their own behalf, the defendants failing to appear and thereupon the plaintiffs produced the following witnesses in their order, to wit:

JAMES M. WOOLWORTH being by me first duly sworn testified as follows:

Q. What is your name, occupation and place of residence?

A. My name is James M. Woolworth; I am a lawyer and I live at Omaha in Douglas county, State of Nebraska.

Q. Do you know Erwin Davis and if so, how long have you known him?

A. I do know Erwin Davis and I have known him more than 15 years.

Q. Do you know Henry A. Root and if so, how long have you known him?

A. I know Henry A. Root and have known him more than 15 years.

Q. Where does Erwin Davis reside?

A. He resides in New York; his family live at Portchester in that State and he lives in New York city.

Q. How long has he resided there?

A. He has resided there for more than 15 years.

Q. Do you know where Henry A. Root resides; if so state?

A. Until about five years ago, he lived in New York city; after that he claimed a residence in Montana. I am not able to

250 state whether New York or Montana has been his residence for the last five years.

Q. Did you ever have any professional relations with Erwin Davis: if so, state what they were?

A. I have been attorney for Erwin Davis in a great many different cases at different times during the last 15 years.

Q. Did you ever have any professional connection with Henry A. Root?

A. Henry A. Root was employed with me as an attorney for Erwin Davis in some of the cases spoken of by me in my last above answer.

Q. Did you ever have any employment for Erwin Davis in the case of Algernon S. Patrick plaintiff, against said Davis in which judgment was rendered in favor of said Patrick and against Davis in the United States circuit court for the district of Nebraska; if so, when were you so employed by him and what services did you render?

A. If my recollection serves me correctly, that action was brought in 1875. Davis desired to employ me at that time to defend that action, but I refused to accept any employment for him in it. After the trial the first time in the circuit court of the United States, I found myself at liberty to accept an engagement by him and did so and carried the case for him to the United States Supreme Court, where with other counsel I argued it for him; judgment had been rendered against him in the United States circuit court for Nebraska, and I carried it to the Supreme Court by writ of error; that argument resulted in reversing the judgment and an order was made by the court for a new trial. I continued to be Davis' attorney in that case on the second trial which also resulted in a judgment against him and I carried it again to the Supreme Court of the United States where the judgment was affirmed.

251 Q. Did Henry A. Root have any connection with that case for Davis?

A. He did. Before the first trial he came here and assisted the counsel for Davis in preparing the case for trial. His name was on the brief in the Supreme Court but he did not participate in the argument.

Q. Did you have any conversation with him at that time with reference to the lands which were attached in that action?

To which the defendant objected as incompetent, irrelevant and immaterial, which objection was over-ruled; to which the defendant excepted.

A. I did have several conversations with him about those lands, particularly at the time he was in Omaha participating in the preparation of the case for trial.

Q. State what was said by him about those lands?

To which the defendant objected and also to the answer hereof, as incompetent, irrelevant and immaterial and a privileged communication, which objection was over-ruled; to which the defendant excepted.

A. I do not know that I can give the whole of the conversation it was I think 12 years ago, and I cannot recall all that was said the subject of the conversation was whether if Patrick recovered a judgment against Davis he would be able to hold the lands to satisfy the judgment. He stated that Davis had conveyed the lands to him, but that the deed was made after the action of Patrick against Davis mentioned above was brought and the lands attached in that action. He said that the deed was dated back of the levy of the attachment and that it was acknowledged by a notary public who lived in Brooklyn, New York, but who dated his certificate of acknowledgment at a day prior to the commencement of the
252 action. He said that this was done for the purpose of cutting out the attachment and defeating it so that the lands would not be liable to any judgment which Patrick might obtain.

Q. Did you ever have any conversation with Erwin Davis on this subject?

A. I did, but I decline to state that conversation, because it was while I was attorney for Davis and Davis might very well claim that his statements to me were confidential.

Q. After the action was brought by Patrick against Davis, state who paid the taxes on the lands?

A. Davis paid the taxes for one or two or three years; I did so for him as his agent.

Q. Did Root ever claim any interest in the lands?

A. He never did; on the other hand he disclaimed having any interest in them.

(Signed) JAMES M. WOOLWORTH.

(Here followed certificate of notary, and notice attached.)

EXHIBIT "35."

In the District Court for Douglas County.

ALGERNON S. PATRICK
v.
ERWIN DAVIS, HENRY A. ROOT, J. N. H. PATRICK, and JAMES M. Woolworth.

Now come the parties, plaintiff and defendants by their respective attorneys, and consent that this action be tried, this day.

Thereupon the said trial comes on, and the parties adduce their proof from which this court finds as follows:

253 First. That on the 21st day of January 1890, in the United States circuit court for the district of Nebraska, Algernon S. Patrick recovered against Erwin Davis, a judgment for sixty five thousand dollars, ($65,000.00) damages and three hundred and eighty-three dollars and sixty cents ($383.60) costs, that the lands in said petition and hereinafter described, were taken upon a writ of attachment issued in said action, and the said lands were so held

by and under said writ, at the recovery of said judgment. Said judgment has never been paid, discharged, modified or reversed, but remains in full force and effect.

Second. After the levy of said writ of attachment upon said lands, and after the said lands had become bound by said writ, said Davis caused to be recorded, in the clerk's office of Knox county, in this State, in which county said lands are situate, a deed purporting to have been made by him, bearing date October 8th 1880. Said deed was not made or executed by the said Davis on the day of its date, and was not executed by him until after the levy of the attachment, and the same was made and ante-dated for the express purpose of defeating the said attachment, and putting said lands beyond the reach of said plaintiff said Root paid no consideration to said Davis for said deed, and said Davis has at all times been in possession of said lands, and has paid taxes thereon and received the rents and profits arising therefrom, and said Root has never exercised control over said lands, or any of them, or claimed any interest therein and said deed was made to hinder, delay and defraud the said plaintiff as the creditor of said Davis.

Third. Said deed is a cloud upon the title to said lands and stands in the way of said plaintiff realizing from said lands, their full value at any sale thereof under said attachment. Said
254 United States circuit court has ordered said attached property to be sold for the payment of said judgment.

Fourth. The defendants J. N. H. Patrick and James M. Woolworth had at the commencement of this action in their possession, fourteen thousand ($14,000.00) dollars which sum was the proceeds of a sale of certain lands in this State, belonging to said Davis, which sum in their hands held by them for him, was justly applicable to the payment of the said judgment. Said defendants have placed said sum in the hands of said plaintiff and the same ought to be credited upon the said judgment by him. Neither said J. N. H. Patrick nor said Woolworth had at the commencement of this action, and other or further sum belonging to said Davis, to which he made claim.

Thereupon, it is ordered, adjudged and decreed by this court as follows: That by the payment by said J. N. H. Patrick and James M. Woolworth of the said sum of fourteen thousand ($14,000.00) dollars to said plaintiff, since the commencement of this action, they are not justly liable to said plaintiff for the sum of fourteen thousand ($14,000.00) dollars or any other sum whatever, on the day of this trial. That that certain deed of conveyance, purporting to have been made by said Erwin Davis to said Henry A. Root, bearing date October 8th, 1880, conveying said lands to said Root, was made for the purpose of hindering, delaying and defrauding the plaintiff as a creditor of the said Davis, and that the said deed is fraudulent and void. That said Root within five days from the date of this judgment, make a deed, running to said Davis as grantee, reconveying said lands to said Davis so that the same will be liable to the judgment of said plaintiff against said Davis hereinbefore mentioned, and in default of doing so within the day above limited, this judgment and decree shall have the same operation and effect, and

be as available as if said Root had executed such conveyance,
255 conformably to the command of this judgment or decree, and that this judgment or decree be recorded in the office of the clerk of Knox county, and that the said clerk be and is hereby ordered to enter in the margin of the record of said deed from Davis to said Root, a memorandum as follows: "This deed has been set aside and held for naught by a judgment and decree of the district court, within and for Douglas county, rendered in an action between Algernon S. Patrick, plaintiff and Erwin Davis and others, defendants.

The lands hereinbefore referred to, and effected by this judgment and decree, are described as follows:

The south-west quarter of section 25; the north-west quarter of section 20; the north half of section 19; the west half of section 18; the north-east quarter of section 31; the north half of the north-east quarter of section 22; the north-west quarter of section 22; the north half of the south-west quarter of section 22; the south half of section 15; the west half of section 29; the south half of section 31; the south-east quarter and the north-west quarter and the south-west quarter of section 17; the north half of section 27; the north-east quarter and the north-west quarter and the south-west quarter of section 20; and the south half of the south-west quarter and the south half of the south-east quarter of section 22 and the south-west quarter of section 19; and the north half of section 4; and the north half of the north-east quarter and the east haof of the south-east quarter and the east half of the south-west quarter, and the west half of the wouth-west quarter of section 9; all in township 31 range 3 west. And the south-west quarter of section 15; and the north-east quarter of section 13; and the west half of the north-
west quarter and the west half of the south-west quarter of
256 section 33; all of section 32; the south-west-quarter and the north half of the north-west quarter of section 11; and the south half of the south-west quarter of section 2, all in township 31 north range 2 west.

Also the following described lands in township 30 north range 2 west in said county. The east half of section 34; the east half of section 8; south half of section 9; the southeast quarter and the west half of the south-west quarter of section 30; and the north-west quarter of section 35. Also the following tract in township 30 range 3 west in said county. The south half of section 32. Also the following tracts in township 29 range 3 west in said county. The south-west quarter of section 4; the south-east quarter of section 5; the north-east quarter and the north-east quarter of the south-west quarter and the west half of the south-west quarter and the north-west quarter of the south-east quarter of section 2; the north half of the south-east quarter of section 3; the north-west quarter of section 7; the north half of the north-west quarter of section 4; the north-east quarter of section 4; the north half of the north-west quarter of section 8; the north-east quarter of section 12; the south-west quarter and the north-east quarter of section 6; and the following tract in township 31, range 3 west in said county. The north-west

quarter and the south half of the north-east quarter of section 4; and the following tract in township 30 range 3 west in said county. The south half of section 32.

It is ordered that the plaintiff recover his costs against the defendants Davis and Root.

May 12, 1894.

JOSEPH H. BLAIR, *Judge.*

257 THE STATE OF NEBRASKA, } ss:
Douglas County, }

I, Frank E. Moores, clerk of the district court, fourth judicial district of the State of Nebraska, in and for Douglas county, do hereby certify that the foregoing is a full and true copy of the decree in the case of A. S. Patrick *vs.* Erwin Davis *et al.* as appears from the original thereof now on file and of record in the office of the clerk of said court.

Witness my signature and official seal, this 17th day of May, 1894.

FRANK E. MOORES, *Clerk,*

[SEAL.] By A. STURE, *Deputy.*

Endorsed on the back: Patrick *v.* Davis *et al.* Decree.

STATE OF NEBRASKA, } ss:
Knox County, }

Received for record this 28 day of May A. D. 1894 at 9 o'clock and — minutes a. m. and recorded in Book 5 Miscl. page 78 Record.

CHAS. VAN CAMP, *Clerk.*

By P. B. CLARK, *Deputy.*

Received of Willis E. Reed, for examination and amendment, a draft of a bill of exceptions in the case of Alvin L. Leigh *vs.* H. S. Green tried in the district court of Knox county, at the May term, 1897.

J. C. CRAWFORD,
Att'y for Pl't'f.

Dated Nov. 29, 1897.

I herewith return the draft of the bill of exceptions in the case of Alvin L. Leigh against H. S. Green submitted to me on the 29th day of Nov. 1897, and have no amendments to propose to the same.

J. C. CRAWFORD,
Att'y for Pl'f.

Dated Dec. 17, 1897.

The foregoing is all the evidence offered or given by either party on the trial of the cause, and on application of the defend-
258 ant this bill of exceptions is allowed by me and ordered to be made a part of the record in this case.

JOHN S. ROBINSON, *Judge.*

Dated Dec. 28th, 1897.

STATE OF NEBRASKA, } ss:
Knox County, }

I, R. H. Harris, as clerk of the district court of Knox county Nebraska, do hereby certify that the within and foregoing is the original bill of exceptions in case of Alvin L. Leigh *vs.* H. S. Green, whose first and real name is unknown, and the said original bill of exceptions was filed by me in said office in said county, on the 3rd day of January, 1898.

In witness whereof I have hereunto subscribed my name and attached my official seal as clerk of the district court of said county.

R. H. HARRIS,
[SEAL.] *Clerk of Dist. Court.*

Endorsed: 9838. Leigh *vs.* Green, Bill of exceptions. Supreme court of Nebraska, Filed Jan. 17, 1898, D. A. Campbell, clerk.

And afterwards on the 18th day of March, 1898 there was filed in the office of the clerk of said supreme court a certain stipulation as to briefs in words and figures following, to wit:

In the Supreme Court of the State of Nebraska.

ALVIN R. LEIGH, Appellee, }
v. } Stipulation.
HENRY S. GREEN, Appellant. }

It is hereby stipulated and agreed by and between the parties herein, that the appellant, H. S. Green, shall have until July 1, 1898, within which to prepare and settle and file his brief
259 herein, and that the appellee shall have until December 1, thereafter, to prepare and file his brief.

Dated this 15th day of March, 1898.

J. C. CRAWFORD,
Att'y for Appellee.
JAMES McCABE AND
W. E. REED,
Att'ys for Appellant.

Endorsed: Leigh *v.* Green 9838 Stipulation, Supreme court of Nebraska, Filed Mar. 18, 1898 D. A. Campbell, clerk.

And afterwards on the 11th day of April 1898 there was filed in the office of the clerk of said supreme court a certain stipulation removing record in words and figures followind, to-wit:

In the Supreme Court of the State of Nebraska.

ALVIN L. LEIGH, Plaintiff,
vs.
H. S. GREEN, Defendant. } Stipulation for Removal of Record to Prepare Brief.

It is hereby stipulated and agreed by and between the parties hereto, that the defendant, by his counsel W. R. Green James McCabe and Willis E. Reed, or either of them, may remove from the records in this court in this case, the transcript and bill of exceptions for the purpose of preparing brief, and that the appellee, by his counsel, James C. Crawford, may remove from the records the transcript and bill of exceptions for the purpose of preparing brief.

J. C. CRAWFORD,
Att'y for Appellant.
W. R. GREEN,
WILLIS E. REED,
Att'ys for Appellants.

Endorsed: 9838. Leigh *v.* Green, Stipulation. Supreme court, of Nebraska. Filed Apr. 11, 1898. D. A. Campbell, clerk.

And afterwards on the 16th day of June 1898 there was filed in the office of the clerk of said supreme court a certain stipulation as to filing briefs in words and figures following, to-wit:

260 In the Supreme Court of the State of Nebraska.

ALVIN L. LEIGH, Appellee,
vs.
H. S. GREEN, Appellant. } Stipulation.

It is hereby stipulated by and between the parties hereto that the appellant H. S. Green shall have until August 1st, 1898 to file in said court his brief and argument in the above entitled action, and that the appellee, Alvin L. Leigh shall have until January 1st thereafter to file his brief and argument therein.

JAMES McCABE,
W. E. REED, &
W. R. GREEN,
Attorneys for Appellant.
J. C. CRAWFORD,
Attorneys for Appellee.

Dated June 10, 1898.

Endorsed: 9838 Alvin L. Leigh *v.* H. S. Green, Stipulation. Supreme court of Nebraska, Filed Jun- 16, 1898. D. A. Campbell, clerk.

And afterwards on the 3rd day of January, 1898 there was filed in the office of the clerk of said supreme court a certain stipulation as to briefs in words and figures following to-wit:

In the Supreme Court of Nebraska.

ALVIN L. LEIGH, Appellee,
vs.
H. S. GREEN, Appellant. } Stipulation.

It is hereby stipulated and agreed by and between the parties to the above entitled action that the appellant Alvin L. Leigh shall have until March 1st, 1899 in which to file his brief herein, and the stipulation heretofore filed with reference to the time of filing of said brief is hereby modified to that extent.

J. C. CRAWFORD &
E. C. McNISH,
Attorney- for Appellee.
W. R. GREEN &
JAS. McCABE,
Attorneys for Appellant.

Dated December 6th 1898.

Endorsed: 9838 Supreme court State of Nebraska, Alvin L. Leigh *vs.* H. S. Green. Stipulation. Supreme court of Nebraska, Filed Jan. 3, 1899. D. A. Campbell, clerk.

261 And afterwards on the 17th day of October, 1899 there was filed in the office of the clerk of said supreme court a certain stipulation in words and figures following to wit:

In the Supreme Court of the State of Nebraska.

ALVIN L. LEIGH
v.
H. S. GREEN. } Stipulation.

It is hereby stipulated that the defendant and appellant H. S Green herein may have until Jan'y 1st 1900 to serve and file reply to argument of plaintiff and appellee.

Dated June 15, 1899.

W. R. GREEN &
JAS. McCABE,
Att'ys for H. S. Green, Def't and Appellant.
J. C. CRAWFORD &
McNISH & OLESON,
Att'ys for Alvin L. Leigh, Pl'tf & Appellee.

Endorsed: 9838 Alvin L. Leigh *vs.* H. S. Green, Stipulation. Supreme court of Nebraska, Filed Oct. 17, 1899 D. A. Campbell, clerk.

And afterwards on the 8th day of December 1899, there was filed in the office of the clerk of said supreme court a certain stipulation in words and figures following, to wit:

In the Supreme Court of the State of Nebraska.

ALVIN L. LEIGH, Appellee,
vs.
H. S. GREEN, Appellant. } Stipulation.

It is hereby stipulated by and between the parties that the plaintiff in the original action and now appellee in the supreme court, may have until the 15th day of November, 1899, to file a supplemental brief in case he desires to do so.

Dated this 16th day of October, 1899.

W. R. GREEN &
JAS. McCABE,
Attorneys for H. S. Green, Defendant and Appellant.
J. C. CRAWFORD &
McNISH & OLESON,
Attorneys for Alvin L. Leigh, Plaintiff and Appellee.

Endorsed: 9838, Leigh *v.* Greene Stipulation. Supreme court of Nebraska, Filed Dec. 8 1899. D. A. Campbell, clerk.

262 And on the 21st day of May 1900 the following proceedings were had and done in the court:

The following cases were submitted.

Leigh *v.* Green; No. 9838. Appeal, Knox. * * *

* * * * * * *

And afterward on the 19th day of June, 1901 there was rendered by said court and entered of record upon the journal thereof a certain judgment in the words and figures, following to-wit:

ALVIN L. LEIGH, Appellee,
vs.
H. S. GREEN, Appellants. } Appeal from the District Court of Knox County. No. 9838. Judgment of Reversal.

This cause came on to be heard, was taken up and argued by counsel, on consideration whereof the court finds there is error apparent on the record in the proceedings and judgment of the district court. It is, therefore, considered by the court that said judgment be and the same hereby is reversed and said cause remanded to said district court with directions to enter a decree therein in accordance with the opinion herein filed.

263

LEIGH
v.
GREEN. } No. 9838.

Opinion. Filed June 19, 1901.

Commissioner's opinion, department No. 3.

1. Where service is had by publication jurisdiction attaches, although the affidavit for service is sworn to before the filing of the petition, provided, the interval between the two acts is so brief that no presumption can fairly arise of a change in the jurisdictional facts set forth in the affidavit.
2. An interval of two days held too short to give rise to such presumption.
3. Where the facts required in an affidavit are of such a character that positive knowledge, on the part of affiant is impossible, such affidavit may be made on information and belief.
4. An affidavit for service by publication is sufficient if made upon information and belief.
5. An affidavit for service by publication is not for the information of the party to be served, but to enable the court to determine whether the action is one in which jurisdiction may be acquired by such service.
6. When such affidavit is sufficient to enable the court to determine whether the action is one of which jurisdiction may be acquired by service of publication, service based thereon is valid.
7. Affidavit examined and held sufficient to give the court jurisdiction.
8. An attaching creditor held not to be an owner within the meaning of sec. 4, art. 5, ch. 77, Comp. Stats.
9. The holder of a tax lien may bring an action for the foreclosure in a State court and prosecute the same to a decree and sale of the land, notwithstanding the pendency of an action between other parties, in the Federal courts, wherein such lands have been levied upon under an order of attachment.

264 ALBERT, *C.:*

On the 24th day of November 1880, Erwin Davis held the record title to certain lands in Knox county. On the date mentioned Algernon S. Patrick commenced an action in the district court of that county, and procured an order of attachment to be levied on said land. On the 18th day of April 1882, the case was removed to the United States circuit court, wherein a judgment was rendered in favor of the plaintiff, on the 21st day of January, 1890, and an order made for the sale of the lands for the satisfaction thereof. In pursuance of said order, on the 15th day of May, 1894, the lands were sold to Lionel C. Burr by the United States marshal, whose deed to

Burr therefor was filed for record in the office of the clerk of Knox county on the 26th day of May, 1894. On the day the deed was executed, Burr conveyed the premises to J. C. Crawford and R. C. Peters, by warranty deed, which was recorded on the 28th day of May, 1894. On the 23rd day of May, 1894, Crawford and Peters conveyed the land to Alvin L. Leigh, the plaintiff in this case.

On the 28th day of December, 1882, and while said attachment proceedings were pending, a warranty deed to said lands, purporting to have been executed by Erwin Davis to Henry A. Root on the 8th day of October, 1880, was filed for record in the office of the county clerk of Knox county.

On the 12th day of May, 1894, in an action pending in the district court of Douglas county, wherein Algernon S. Patrick was plaintiff and Erwin Davis, Henry A. Root, J. N. H. Patrick and J. M. Woolworth were defendants, a decree was entered whereby the said deed from Davis to Root was cancelled and set aside as fraudulent and void, as against the plaintiff in that case, and whereby the title to said land was quieted and confirmed in said plaintiff as against said Root.

265 In 1891, several actions were brought in the district court of Knox county, wherein the Farmers Loan & Trust Company was plaintiff and Henry A. Root and different sub-divisions of the land in controversy were defendants, for the foreclosure of certain tax-liens, which actions so taken together involved the title to the land in controversy in this suit. In the same year a decree of foreclosure was entered in each case, and an order made directing the sale of said sub-divisions, respectively, for the satisfaction of the amount found due by the respective decrees. In pursuance of these several decrees and orders, the lands were sold by the sheriff of that county to H. S. Green, the defendant in the present action and deeds of conveyance therefor were duly executed and delivered to said purchaser by the sheriff.

The plaintiff in the present case claims title to the lands, basing his claim of title on the attachment proceedings herein before mentioned; the defendant also claims title thereto, basing his claim of title on the proceedings had for the foreclosure of the tax-liens. The present action was brought by the plaintiff, Alvin L. Leigh, against the defendant H. S. Green, to quiet his title to the land in controversy. From a decree in favor of the plaintiff the defendant prosecutes an appeal to this court.

From the foregoing statement, it will be seen that both parties trace their title to Erwin Davis. The sole question to be determined in this case is, whether the plaintiff is concluded by the proceedings had in the district court of Knox county for the foreclosure of the tax liens, by virtue of which the defendant claims title to the lands in controversy. The plaintiff assails those proceedings upon three grounds:

(1.) That the service was had by publication and the affidavits therefor were not sufficient to authorize service by publication.

(2.) That there was no case made for proceeding against the land

in any of said foreclosure proceedings, without impleading
266 Algernon S. Patrick, who, at the time said proceedings were brought had an attachment lien on the lands for the satisfaction of which the land — afterward sold.

(3.) That the proceedings to foreclose said liens were had during the time the land in controversy was under attachment in an action pending in the circuit court of the United States, and for that reason the proceedings to foreclose the tax liens were void.

The actions for the foreclosure of the tax liens were brought under art. 5 of chap. 77 of the Compiled Statutes. Section 4 of that article is as follows:

"Service of process in causes instituted under this chapter shall be the same as provided by law in similar causes in the district courts, and where the owner of the land is not known, the action may be brought against the land itself, but in such case the service must be as in the case of a non-resident; if the action is commenced against a person who disclaims the land, the land itself may be substituted by order of court for the defendant, and the action continued for publication."

In each of the foreclosure cases, the sub-division of the land to be effected thereby was made a party as provided by the section just quoted, and service was had by publication. The affidavit in each case, except as to the land described, which varied according to the sub-division, made a party, was as follows:

"In the District Court of Knox County, Nebraska.

FARMERS LOAN & TRUST COMPANY, Plaintiff *vs.* HENRY A. ROOT and N. E. ¼ SEC. 27, Twp. 31, Range 3 West, 5th P. M., Defendants.	Affidavit for Publication of Notice.

STATE OF IOWA, *Woodbury County,* } *ss:*

I, M. J. Sweeley, being first sworn, do state that I am the attorney for the plaintiff above named; that this case is one of those named in
in section 77, title V of the Code of Civil Procedure of the
267 State of Nebraska and is an action relating to real property in said State in which the defendants have or claim to have a lien or interest actual, or contingent, and the relief demanded consists wholly or partially, in excluding defendants from any interest therein, that the defendant Henry A. Root, is a non-resident of said State of Nebraska, and that service of summons cannot be made on him within said State.

I further state that the owner of the real estate involved in said action and above described is not known, all of which I verily believe to be true.

(Signed) M. J. SWEELEY.

Subscribed and sworn to before me this 28th day of September 1891.

[SEAL.] L. GREENWOOD,
Notary Public."

The plaintiff insists that the affidavits were insufficient and for that reason the court acquired no jurisdiction.

One objection urged against the affidavits is, that they were sworn to some two days before the petitions were filed in the respective cases. The argument on this point, as we understand it, is, that between the making of the affidavit and the filing of the petition, condition- might have changed so that service might have been had on the defendant in this State, or in some other way, so that the affidavit could not have been truthfully made at the time of filing.

It is clear that the law must permit some interval to elapse between the making and the filing of the affidavit, because strictly speaking, the two acts could not be simultaneous. That being true, the only question that can arise is what length of time it will permit to elapse between the two acts. The statute is silent on the subject; hence, the inference is warranted that it will permit a reasonable time. Just what will be regarded as a reasonable time this court has not decided. However, in Armstrong *v.* Mittalstadt, 22 Nebr., 711, it was held that an affidavit made one day before
268 the petition was filed was sufficient. But in that case, the court expressly disclaims any intention to go beyond the facts, and, of holding that an affidavit made several days before the commencement of the action would be sufficient. In our opinion, when the petition is filed within such time after making the affidavit that no presumption could fairly arise that the state of facts had changed in the interval, it is sufficient. Crombie *v.* Little, 47 Minn., 581; Snell *v.* Meservy, 91 Ia., 822. Applying this rule to the affidavits in question, we do not believe that any presumption of a change in the state of facts, during an interval of two days could fairly arise.

Another objection urged against the affidavits is, that they are sworn to upon information and belief. The affidavits contain the positive statements of the affiant which are followed by these words: "All of which I verily believe to be true."

We do not believe the objection is well taken. Among other things, the affidavit must show that service cannot be had on the defendant in this State. In the very nature of things, upon this point, at least, the affiant, whatever the wording of the affidavit, can never have positive knowledge. That he makes such statement upon information and belief, is a necessary implication. To expressly state that, which in the absence of such statement would be necessarily implied, affects only the form and not the substance of the affidavit. Colton *v.* Rupert, 60 Mich., 318; Pratt *v.* Stevens, 94 N. Y., 387; Belmont *v.* Carmen, 82 N. Y., 256; Howe Machine Co. *v.* Pettibone, 74 N. Y., 68. In Kansas such an affidavit has been held defective, but not void. Harrison *v.* Bears, 30 Kan., 532. In our

opinion an affidavit for service by publication, sworn to upon information and belief, is, not for that reason, void.

A more serious objection to the affidavit is, that the matters set forth are insufficient to warrant service by publication, and, for that reason the court acquired no jurisdiction by such service.

269 The section of the statute, under which the actions under consideration were brought, hereinbefore set out at length, provides that service must be as in case of non-residents. Section 77 of the Code of Civil Procedure prescribes the manner of making service on non-residents, and so far as is material for present purposes is as follows:

"Service may be made by publication in either of the following cases: First—In actions brought under the fifty-first, fifty-second and fifty-third sections of this code, where any or all of the defendants reside out of the State. * * * Fourth—In actions which relate to, or the subject of which is, real or personal property in this State where any defendant has or claims a lien or interest, actual or contingent therein, or the relief demanded consists wholly or partially in excluding him from any interest therein, and such defendant is a non-resident of the State, * * * ."

The actions mentioned in sections 51, 52 and 53, referred to in the section just quoted, are actions for the recovery of real property, or of an estate or interest therein, actions for the partition of real property, actions for the sale of real property, under a mortgage lien or other incumbrance or charge, and actions to compel the specific performance of a contract for the sale of real estate.

Section 78 of the Compiled Statutes relating to the affidavit for service by publication is as follows:

"Before service can be made by publication, an affidavit must be filed, that service of a summons cannot be made within this State, on defendant or defendants to be served by publicatien, and that the case is one of those mentioned in the preceding section. When such affidavit is filed the party may proceed to make service by publication."

270 One of the grounds urged against the sufficiency of the affidavits is that the object of the action is not set forth. Each affidavit contains the following statement: "This case is one of those named in section 77, title V, of the Code of Civil Procedure of the State of Nebraska." In Majors v. Edwards, 36 Nebr., 56, this court held that such a statement of the object was sufficient, although, at the same time, it intimated that the better practice would be to set out the object of the action more fully. But, it will be observed, that the language above quoted, is followed by the further statement, "and is an action relating to real property in said State, in which the defendants have or claim to have a lien or interest actual or contingent, and the relief demanded consists wholly or partially in excluding defendants from any interest therein." Plaintiff contends that, assuming that the object is sufficiently stated by saying that the action is one of those named in said section 77, the subsequent statement renders the affidavit invalid, for the reason that the object thereby stated is different than that sought in the

actions, and that such statement being specific must prevail over the general statement. It must be kept in mind that an affidavit for service by publication is not required for the information of the defendant as to the nature and object of the action. The sole purpose of such an affidavit is, to enable the court upon inspection to determine whether the action is one in which jurisdiction may be obtained by service by publication; when it is sufficient for that purpose it serves the only purpose for which it is intended. The affidavits under consideration, fairly construed, mean, that the actions, wherein they were respectively filed, were those named in section 77 of article 5 of the Code of Civil Procedure and that the relief demanded consisted in part of excluding the defendant Root from any interest in the lands described. The relief sought by those actions was the fore-
271 closure of certain tax liens on the several sub-divisions of the land, and the sale thereof, for the satisfaction of the amount found due. In the petitions, filed in the several cases, it is alleged, "that the owner of the land is unknown and that the defendant Root has, or claims, some interest in the land." The prayer of each, in part is, "for the adjudication that plaintiff's tax lien is a first lien on the land, and that the deed issued in pursuance of such proceedings be an absolute bar against each and all of the defendants, and for such other and further relief as may be deemed equitable in the premises." In our opinion, the affidavits were sufficient to advise the court of the nature of the actions, and that the actions were of such a character that it could acquire jurisdiction by service by publication. It follows, therefore, that the affidavits were sufficient for all purposes, especially when assailed in a collateral proceeding.

It is argued in support of plaintiff's second proposition, that at the time of the commencement of the actions to foreclose the tax liens, Algernon S. Patrick, plaintiff in the attachment proceedings in the United States circuit court, by virtue of such proceedings had a lien on the land in controversy and was therefore an owner within the sections of the revenue law, herein before quoted; that his lien was a matter of record in Knox county, and that therefore, the plaintiff in such foreclosure proceedings had the means of knowledge of such lien; that means of knowledge, being equivalent to knowledge, the owner of the land was not unknown to the plaintiff in the actions to foreclose the tax liens, and that as the proceeding against the land was purely statutory, and authorized only in case the owner is unknown, the several decrees are not binding on Patrick, nor those claiming under the title acquired in the attachment proceedings.

The validity of the argument stated depends on the meaning to be given to the word "owner." Its meaning varies according to the context.

272 In proceedings in the exercise of the delegated right of eminent domain by a railroad company, the words has been held to include any person having an interest in land. Gerrard & Whitmoyer *v.* O. & N. B. H. P. R. Co., 14 Nebr., 270; Dodge *v.* O. & S. W. R. R. Co. 20 Nebr., 276. In those cases, the meaning given to the word by this court would include an attaching creditor. But

it is clear from a comparison of the statutes regulating the exercise of the delegated right of eminent domain by a railroad company, and the revenue act, that the legislature intended to give the word "owner" a wider meaning in the former than in the latter. In the revenue act the word is frequently employed and always in the sense of absolute owner. For example, it provides that real estate becoming taxable for the first time shall be listed to the "owner" thereof; that the "owner" of the property on the first day of April in any year, shall be liable for the taxes of that year; that the purchaser of property on the first day of April shall be construed the owner on that day; that land, comprising more than one subdivision, belonging to one owner, may, at his request be listed as one tract. Sections 43, 44 and 45, art. I, chap. 77, Compiled Statutes. These, and many other provisions of the revenue act clearly indicate that the legislature used the word "owner" in the popular sense, the sense in which it is understood by the people at large; and having employed it in that sense in the other parts of the act, the inference is warranted that they used it in the same sense in the sections providing for the foreclosure of tax liens. Tracy v. Reed, 38 Fed., 69. At first sight, it may seem anomalous that a person should be concluded by a proceeding to which he was not a party and of which he had no notice. But it must be kept in mind that the procedure providing for the foreclosure of a tax lien is a part of the revenue system of the State, and that the necessities of a government will not always permit an over-scrupulous regard
273 for private rights. In many States the land is sold and the title of all parties interested divested without any judicial investigation whatever, but by the purely ministerial acts of the county treasurer. Relatively speaking, our procedure for the collection of taxes, including the procedure under consideration, even when construed broadly as the language will permit, is eminently calculated to conserve the rights of the owners of property subject to taxation.

In our opinion, Patrick was not the owner within the meaning of the statute, and the proceedings for the foreclosure of the tax lien were in substantial compliance with the statute, and conclusive against the whole world.

The validity of the proceedings for the foreclosure of the tax liens is assailed on still another ground, and that is, they were brought, tried and determined and the land sold in pursuance thereof, while the land was subject to an attachment issued in an action pending in the circuit court of the United States, and for that reason, it is urged, the proceedings were void, and the deed executed by the sheriff to the defendant conveyed no title.

The doctrine of the Supreme Court of the United States is, that when two courts have concurrent jurisdiction, that which first takes cognizance of the cause, has the right to retain it to the exclusion of the other; that where property is *in gremio legis*, if it be a court of rightful jurisdiction, no other court can interfere and wrest from it the possession and jurisdiction first obtained; and, that a sale, under an order of one court, of property in the custody or possession of

another, conveys no title. Gumbel *v.* Pitkin, 124 U. S., 131; Heidritter *v.* Oilcloth Co., 112 U. S. Rep. 294; Freeman *v.* Howe, 24 Howe, 450; Krippendorf *v.* Hyde, 110 U. S. 276; Covell *v.* Heyman, 111 U. S. 176; Vaughn *v.* Northup, 40 U. S. — 15 Pet. 1; Williams *v.* Benedict, 49 U. S. — How. 107; Peale *v.* Phipps, 55 U. S. — 14 How., 372; Barton *v.* Barbour, 104 U. S., 126; Taylor *v.* Caryll, 61 U. S., 20 How. 583; Gray *v.* Brierfield Coal & Iron Co. 94 Ala. 303, S. C. 16 L. R. A., 564.

274 The case last cited contains an exhaustive review of the authorities from which the rule just stated is deducible. This rule has its foundation, it would appear, not merely in comity, but in necessity; for were it otherwise, the orders of one court might be offset by those of another, and the parties left without any remedy; besides, in their rivalry for possession of property in controversy, a conflict would arise that would not only be embarrassing in the administration of justice, but would be liable to lead to unseemly strife and personal conflicts between the officers of the different courts.

A study of the cases cited shows, that, in each case, the property was in the actual or constructive possession of the court whose jurisdiction was invaded. The decisions are based, in most cases, upon the facts that the subsequent proceedings in another court would interfere with such possession. In none of these cases was the question of the effect of a foreclosure of a mortgage, or other lien on real estate, and the sale thereof in a State court, pending an action between other parties in a Federal court, wherein the same property had been levied upon under an order of attachment directly raised, nor was the determination of that question necessary to a decision in any of said cases. Hence, whatever expressions they may contain on that point are dicta.

In the case of Prugh *v.* Portsmouth Savings Bank, 48 Nebr. 414, which was brought to restrain a United States marshal from selling certain lands on an execution issued from the United States circuit court, it was held, "that when land has been levied upon, it is as much in the custody of the court, and under the control of the process, as when personal property has been seized on execution or in attachment, and the State court was therefore without any authority by injunction or otherwise to interfere with the marshal in the execution of the ..." It will be observed that the foregoing is, to some extent, at least, dictum.

275 It was not necessary to decide, in that case, whether the lands levied upon were in the custody of the court; the precise question involved was, whether the State court might by injunction, restrain the execution of the process of a Federal court. With due regard for the learning of the writer of that opinion, we do not believe the dictum in that case should be adopted as a rule in this State. By the levy of the attachment on the real estate, the Federal court, did not obtain possession of the premises, the possession remained unchanged. The effect of the levy was merely to give the attaching creditor a lien on the equity of redemption of the defendant. By the subsequent foreclosure and sale of the premises under

the tax lien, the State court, having concurrent jurisdiction, no contest for the possession between officers of the different courts arises nor can arise, neither can there be any conflict of jurisdiction; neither the parties nor the *res* were the same. The purchaser, under the judgment rendered in the attachment suit, and the purchaser at a foreclosure sale, were left to their remedies, for the adjustment of their respective rights. The jurisdiction of the circuit court of the United States, after judgment and a sale of the premises for the satisfaction thereof, was at an end. It was not, like a court of equity, required to place the purchaser in possession and such purchaser acquired only the interest of the execution defendant. The proceedings to foreclose the tax liens in the State court, in no manner interfered with the Federal court, or its process, nor with the due and orderly administration of justice. Hence, none of the reasons, upon which the rule of non-interference between the courts of concurrent jurisdiction is based, apply to this case. Where the reasons for a rule cease, the rule should no longer apply.

276 In National Foundary & Pipe Works *v.* Oconto City Water Supply Co., 81 N. W., 125, the supreme court of Wisconsin held, "that the commencement of a suit in the Federal court, to enforce a mechanic's or material man's lien on property, does not preclude the foreclosure of a mortgage on the same property in the State court; that where there is no possession, other than constructive, a suit on a different cause of action may be commenced in the State court and carried to judgment, and actual possession of the property obtained under it, notwithstanding the pendency of the action in the Federal court; citing Compton *v.* Jessop, 68 Fed., 263. *In re* Hall and Stilson Company, 73 Fed., 527, it was held, that the rule of comity, which forbids the seizure of property subject to the jurisdiction of one court of concurrent jurisdiction, applies only where there is actual or constructive possession of the property by the former court; that the levy of an attachment on real estate gives the court whence the process issues, neither actual nor constructive possession of the property, but only creates a lien thereon in favor of the attaching creditor. The doctrine stated in these cases meets with our unqualified approval, especially as applied to this case. The opposite doctrine would require the holder of a tax lien, under the circumstances, to apply to the Federal court for leave to enforce it. But it will not be claimed that the State, under any circumstances, may be compelled to resort to the Federal courts for the collection of its revenues. For it to do so, would be inconsistant with its sovereign character. The tax sales, in question, operated as an assignment of the lien of the State to the purchaser. Good faith, as well as the efficiency of our revenue system, requires that the State afford such purchaser the same facilities for the enforcement of his lien it would command for itself.

277 In our opinion, therefore, the pendency of the action in the Federal court was no obstacle to the prosecution by the holder of the tax lien, of the actions in the State court for their foreclosure, and, the sales made in pursuance of such actions, are valid and

binding, and the defendant in this case thereby acquired a good title to the land in controversy as against the plaintiff.

We therefore recommend, that the decree of the district court be reversed and the cause remanded with directions to enter a decree in accordance with this opinion.

Ames, C. and Duffie, C. concur.

By the COURT: For the reasons given in the foregoing opinion, the judgment of the district court is reversed, and cause remanded with directions to enter a decree in accordance with this opinion.

278 And afterward on the 27th day of July 1901, there was filed in the office of the clerk of said supreme court a certain motion in words and figures following, to-wit:

In the Supreme Court of the State of Nebraska.

ALVIN L. LEIGH, Appellee, v. HENRY S. GREEN, Appellant. } Motion for Rehearing.

Appeal from district court of Knox county.

The appellee moves the court for a re-hearing in the above entitled cause, for the following reasons:

1. The opinion in the case does not discuss or decide the claim made by the appellee that the statute of Nebraska under consideration in the case as construed by the court, is unconstitutional and void, because it deprives appellee of property without due process of law in violation of the provision of the constitution of the State of Nebraska.

2. The opinion in the case does not discuss or decide the claim made by the appellee that the statute of Nebraska under consideration in the case as construed by the court is unconstitutional and void, because it deprives appellee of property without due process of law in violation of the fourteenth amendment to the Constitution of the United States.

3. The court, in its opinion, hold that the proceedings to foreclose the tax certificates mentioned in the opinion, were operative to bar the interest of the appellee of the land in question because the land in question was made a party to the said proceedings to foreclose the tax certificates when in truth and in fact, the land was never by proper proceedings made a party to the foreclosure suit, or brought before the court as a defendant therein

279 4. The law of this State on the sufficiency of an affidavit on information and belief, has been settled and established by the decision of this court in Clarke *v.* Nebraska National Bank, 57 Neb. 314, to the contrary of the view expressed in the opinion in this cause; but the said case of Clarke *v.* Nebraska National Bank, is not referred to in the opinion.

5. And for other good and sufficient reasons.

C. C. McNISH,
ANDERSON KEEFE,
WOOLWORTH & McHUGH,
Attorneys for Appellee.

Endorsed: 9838 doc. — page — In the supreme court of the State of Nebraska. Alvin L. Leigh, appellee vs. Henry S. Green, appellant. Motion for a re-hearing Supreme court of Nebraska, Filed July 27, 1901, Lee Herdman clerk Woolworth & McHugh attorneys for appellee.

And afterward on the 7th day of November 1901 there was rendered by said court and entered of record upon the journal thereof, a certain order in words and figures, following, to wit:

ALVIN L. LEIGH, Appellee,
vs.
H. S. GREEN, Appellant.
} Appeal from the District Court of Knox County. No. 9838.

This cause came on to be heard upon a motion of the appellee for a rehearing herein, on consideration whereof by the court, it is ordered that said motion be and the same hereby is overruled and a rehearing denied.

And afterward on the 11th day of November 1901, there was filed in the office of the clerk of said supreme court a certain motion in words and figures following, to-wit:

In the Supreme Court of the State of Nebraska.

280 ALVIN L. LEIGH, Appellee,
vs.
HENRY S. GREEN, Appellant.
} Motion for a Rehearing.

1. The appellee moves the court for a re-hearing in the above entitled cause for the following reasons: No opinion has been filed in this cause which discusses or decides the contention made by the appellee herein, that the lands in question herein was never by proper proceedings, made a party to the foreclosure suit mentioned in the record herein or brought before the court as a defendant herein.

2. No opinion has been filed herein discussion or deciding the contention of the appellee herein that the statute in question is construed by this court in the opinion herein, was unconstitutional and void because it deprives appellee of property without due process of law in violation of the fourteenth amendment to the Constitution of the United States.

3. Because no opinion has been filed herein, wherein is discussed

and decided the points made and discussed in the brief filed in support of the motion for a re-hearing herein.

O. C. ANDERSON,
C. C. McNISH,
WOOLWORTH & McHUGH,
Attorneys for Appellee.

Endorsed: 9838. Alvin L. Leigh, vs. H. S. Green, Motion for re-hearing. Supreme court of Nebraska, Filed Nov. 11, 1901. Lee Herdman, clerk.

And afterward on the 15th day of November, 1901 there was filed in the office of the clerk of said supreme court a certain motion in words and figures following, to-wit:

281 In the Supreme Court of the State of Nebraska.

ALVIN L. LEIGH, Appellee,
vs.
HENRY S. GREEN, Appellant. } Motion.

Comes now Henry S. Green, appellant, and moves the court for an order directing the clerk of this court to immediately issue and send to the clerk of the district court of Knox county, Nebraska the mandate of this court as provided by the judgment heretofore entered in this cause.

W. R. GREEN,
ED. V. SMITH,
Attorneys for Appellant.

Endorsed: 9838. Supreme court State of Nebraska. Alvin L. Leigh vs. Henry S. Green. Notice & proof of service. Supreme court of Nebraska. Filed Nov. 15, 1901. Lee Herdman, clerk.

And on the same day, there was filed in the office of the clerk of the said supreme court a certain notice in words and figures following, to-wit:

In the Supreme Court of the State of Nebraska.

ALVIN L. LEIGH, Appellee,
vs.
HENRY S. GREEN, Appellant. } Notice.

The above named appellee and his attorneys will take notice that on Tuesday the 19th day of November, 1901 at nine o'clock a. m. or as soon thereafter as counsel can be heard, they will call up for hearing in the supreme court of the State of Nebraska the motion

requiring the clerk of said court to immediately issue a man-
282 date in accordance with the judgment of said *said* court heretofore entered. A copy of said motion is attached to and made a part of this motion.

W. R. GREEN,
ED. P. SMITH,
Attorneys for Appellant.

Received copy of the above notice this 13th day of November 1901.

WOOLWORTH & McHUGH,
Attorneys for Appellee.

Endorsed: 9838. Leigh *vs.* Green, Motion for mandate. Supreme court of Nebraska, Filed Nov. 15, 1901 Lee Herdman, clerk.

And on the same day there was filed in the office of the clerk of the said supreme court a certain affidavit in words and figures following, to-wit:

In the Supreme Court of the State of Nebraska.

ALVIN L. LEIGH, Appellee,
vs.
HENRY S. GREEN, Appellant. } Affidavit.

Ed. P. Smith, being first duly sworn deposes and says he is one of the attorneys for the appellant herein. Affiant further states that at the January, 1901 term of this court, to-wit on the — day of June, 190–, a decision was handed down by this court reversing the judgment of the district court in which said cause was tried and directing that a decree be entered in said cause in favor of this appellant; that thereafter a motion for a rehearing was filed and which motion was on the 7th day of November, 1901 overruled by this court. Affiant says that thereafter as the attorney for the appellant he requested that the clerk of this court issue the mandate to carry into
effect the judgment of this court but the clerk of this court
283 fails and refuses to issue said mandate.

ED. P. SMITH.

Subscribed in my presence and sworn to before me this 14th day of November, 1901.

FRANK HELLER,
[SEAL.] *Notary Public.*

Com. ex. 2/19,/03.

Endorsed: 9838. Leigh *v.* Green, Affidavit. Supreme court of Nebraska, Filed Nov. 15, 1901, Lee Herdman, clerk.

That on the 19th day of November, 1901 the following proceedings were had and done in the court:

The following cases were submitted on motion.

* * * * * * *

Appeal from Knox county. Leigh *vs.* Green.

And afterward, to-wit on the 18th day of December, 1901 there was rendered by said court and entered of record upon the journal thereof, a certain order in the words and figures following, to-wit:

ALVIN L. LEIGH, Appellee, *vs.* H. S. GREEN, Appellant. } Appeal from the District Court of Knox County. No. 9838.

This cause came on to be heard upon a motion by the appellee for a rehearing herein, on consideration whereof by the court it is ordered that said motion be and the same hereby is sustained and a rehearing allowed.

That on the 4th day of March 1902, the following proceedings were had and done in the court:

The following cases were submitted on motion:

* * * * * * *

Leigh *vs.* Green Appeal from Knox county.

* * * * * * *

284 And afterward, to-wit, on the 23rd day of April, 1902, there was rendered and entered of record a certain judgment by the said supreme court in the words and figures following, to-wit:

ALVIN L. LEIGH, Appellee, *v.* HENRY S. GREEN, Appellant. } Appeal from the District Court of Knox County. No. 9838. Judgment of Reversal.

This cause came on to be heard upon a rehearing thereof heretofore duly allowed by the court, and was taken up and argued by counsel;

On consideration whereof the court finds that there is no error apparent upon the record in the judgment heretofore rendered herein by this court whereby it was ordered that the said judgment of the said district court be reversed and said cause remanded to the said district court with directions for further procedure; and it is therefore considered by the court that the judgment heretofore rendered by this court herein on June 19, 1901, be and the same is hereby in all respects adhered to; and it is further ordered that a mandate directing the district court to carry into effect the said judgment of this court be issued.

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LEIGH
v.
GREEN. } No. 9838.

Opinion. Filed April 23, 1902.

Commissioner's opinion, department No. 2.

1. It seems that so long as a witness is willing to and does testify to a fact positively, and not merely to his belief therein, his affidavit in which it is positively stated, does not become an affidavit upon information and belief by the addition of a further statement that he verily believes all the facts set forth to be true.
2. Where a showing by affidavit is required as to facts which are necessarily matters of information and belief, an affidavit on information and belief is sufficient.
3. A description of land in a published notice is sufficient where the context of the notice shows clearly that land in this State is referred to and there is but one tract in the State answering such description, although it likewise describes another tract situated in another State.
4. The term "owner" in sec. 4, art. 5, chap. 77, Compiled Statutes, refers to persons having estates in the land in question and not to incumbrancers and lien-holders.

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5. It seems that the owner of land is "not known" within the meaning of said section when the holder of a tax-certificate is unable by reasonable diligence and inquiry in the neighborhood of the land in question to learn the whereabouts of the person or persons appearing to have estates therein or when he is unable to ascertain who have such estates.
6. When the owner of the land is not known to the holder of a tax-certificate and cannot be found upon reasonable inquiry, the holder of such certificate may make the land a party to foreclosure proceedings; and in such case allegations in the petition and an affidavit for service by publication on information and belief, to the effect that the owner is unknown, are sufficient as against collateral attack.
7. Whether or not in such case the plaintiff may join as defendants persons claiming some interest in the land, if the land is properly made a party, such joinder could at most be an irregularity only, and would not affect the validity of the proceedings when attacked collaterally.
8. If the land is properly made a party and jurisdiction over it is duly acquired by publication of notice, a sale under decree of foreclosure creates a new and independent title, and bars all pre-existing interests or liens.
9. Sections 4 and 6, art. 5, chap. 77, Compiled Statutes, providing for foreclosure of tax-liens by proceedings *in rem* to which the

287 land alone is made a party, and for cutting out all pre-existing rights or liens by sale under decree therein, are not in conflict with the State or Federal constitutions as depriving persons of property without due process of law.

288 POUND, *C.*:

The issues of fact and law involved in this appeal are sufficiently stated in the former opinion. Many of the conclusions reached in that opinion are acquiesced in by the parties and have not been re-argued. Four propositions, however, are insisted upon by counsel for appellee as having been overlooked or wrongly determined, and require consideration. These propositions are: Whether an affidavit for service by publication made upon information and belief only is sufficient; whether the description of the land in the published notice was sufficient to give the court jurisdiction in the tax-foreclosure proceedings in question; whether under a proper construction of sections 4 and 6, article 5, chapter 77, Compiled Statutes, foreclosure of a tax lien by suit against the land itself will bar lien-holders not made parties to the proceeding and not served with process; and, finally, whether, if such is the proper construction of said sections, they are constitutional and valid in view of the constitutional provisions both Federal and State against deprivation of property without due process of law.

With respect to the first question, we may remark that it is by no means clear that the affidavit in question is to be treated as one upon information and belief. Examination of the many cases in which affidavits have been held insufficient because made upon information and belief only, discloses that in such cases the affiant
289 stated that he believed so and so (Armstrong *v.* Sanford, 7 Minn., 49; Thompson *v.* Higginbotham, 18 Kan., 42,) or that he had reason to believe and did believe it (Clarke *v.* Nebraska National Bank, 57 Nebr., 314; *Ex parte* Spears, 88 Cal., 640, 26 Pac. Rep., 608 *Ex parte* Morgan, 20 Fed. Rep., 298), or that he was informed and believed so and so (*Ex parte* Rowland, 35 Tex., Cr., 108, 31 S. W. Rep., 651), or that "on his best knowledge, information and belief" certain facts were true (*Ex parte* Lane, 6 Fed. Rep., 34), or that certain statements in a pleading were true except as to statements on information and belief and that such statements were believed to be true (Atchison *v.* Bartholomew, 4 Kan., 124; Attorney General *v.* Bank of Chanango, Hopk. Ch., (N. Y., 596). In another class of cases more nearly like the one at bar the affiant states that certain facts are true as he believes or as he is informed and believes. State *v.* County Commissioners, 49 Nebr., 51; State *v.* Mayor, 4 Nebr., 260; Clarke *v.* Nebraska Nat. Bank, 57 Nebr., 314; Mowery *v.* Sanborn, 65 N. Y., 581. The case at bar differs from all of these. The statements in the affidavit are made positively, but at the end, after stating directly that the owner of the land in question is unknown, there is the further statement "all of which I verily believe to be true." It will be seen that whereas in the cases cited the affiant did not make any positive statements of fact, but merely stated that he believed or was informed and believed that certain facts existed, in this case the

statements are made positively and directly, and there is merely an additional statement that affiant believes them to be true. Does
290 this further statement qualify or detract from what goes before? In Webster *v.* Daniel, 47 Ark., 131, 14 S. W. Rep., 550, the affidavit stated: "that said Peter Webster has left the county of his residence to avoid service of summons as shown by the return of the constable to the writ of summons issued herein." The court held that this was not an affidavit as to what the return showed nor to belief based on information derived from the return, but was positive and referred to the return as evidence only. In *In re* Keller, 36 Fed. Rep., 681, a complaint in extradition proceedings stated an offence positively and directly. A statement was added to the effect that the complainant verily believed the facts stated to be true. The court said: "If it is conceded that the court can construe this pleading and reject it, still I think it is not faulty. It is a statement of a fact which the deponent in testifying to verily believes to be true. A man swears to what he believes to be true, and when he states a fact under oath he verily believes it true. I do not think it faulty on that account. I think this affidavit is sufficient." In Pratt *v.* Stevens, 94 N. Y., 387, the court said: "The addition of the words 'to desponent's best knowledge, information and belief' does not modify or detract from the words previously employed. The general rule is that an oath taken before a competent officer merely verifies truth of the facts stated according to the best knowledge, information and belief of the affiant. The positive affirmation of the facts sworn to in an affidavit is in most cases supposed and understood to be according to the best knowledge, information and belief of the witness." The true criterion would seem to lie in the willingness of the witness to make a positive statement. If his information and knowledge are
291 such that he will make a positive statement of the fact in question upon oath, his evidence is to be received, though the weight to be given it might be small by reason of the nature and extent of the information and knowledge from which he testifies. On the other hand if he has a belief or opinion, but is not so completely satisfied of the fact that he will testify to it directly, but merely states his belief, then the bare statement of what he believes but will not state positively upon his oath is not to be received, unless the case is one where an affidavit as to his belief only is required. In the case at bar, there is a direct and positive statement that the owner is unknown. The further statement that affiant believes it to be true does not detract therefrom. He not only believes it, he is willing to testify to it positively. This is much more than a mere statement of his belief.

But construing the affidavit with counsel for appellee, and giving to the words with which it closes all the effect claimed for them we agree to the conclusion reached at the former hearing, and think it sufficient. Where a showing by affidavit is required as to facts which are necessarily matters of information and belief, an affidavit on information and belief ought to suffice. The statute should receive a construction in accordance with common sense. It was not intended to require perjury, and as it requires affidavit to

matters involving legal opinion and conclusions of law and fact, it must contemplate that such affidavit will be made upon the only basis on which such opinions and conclusions can be reached.

As Albert, C., said in the former opinion, with reference to
292 the required showing that service can not be made in the State: "In the very nature of things, upon this point at least, the affiant, whatever the wording of the affidavit, can never have positive knowledge. To expressly state that which in the absence of such statement would be necessarily implied, affects only the form and not the substance of the affidavit." This is no less true of the statement that the owner of the land in controversy is not known. In a trial, where numerous witnesses are successively examined, the several facts and circumstances may be made to appear by competent proof and the trier of fact may draw the proper inference therefrom. But where one man is to make affidavit to the conclusion, he must in fact state the belief which the information in his possession gives rise to, whether he expressly says so or not. Otherwise, the required affidavit could never be made. In Colton *v.* Rupert, 60 Mich., 318, 27 N. W. Rep., 520, the court say: "In such case an affidavit upon information and belief is all that could reasonably be required. To require that such proof should be established by such evidence as would preclude all reasonable doubt, or of such character and weight as would preclude a possibility of error, would deprive this provision of the statute, in a large majority of cases, of any efficacy, and result in a failure of the remedy designed to be afforded by the law. The law itself is based upon the necessity of the case, in order to enable parties to reach and deal with property within the jurisdiction of the court." A similar observation is made in Snell *v.* Meservy, 91 Ia., 322, 59 N. W.
293 Rep., 332, and the great weight of authority sustains this view. See also Trew *v.* Gaskill, 10 Ind., 265; Bonsell *v.* Bonsell, 41 Ind., 476.

We do not think the cases of Clarke *v.* Nebraska Nat. Bank, 57 Nebr., 314, and Mowery *v.* Sanborn, 65 N. Y., 581, conflict in any way with the foregoing proposition. In Clarke *v.* Nebraska Nat. Bank, the statute required proof of certain facts to the satisfaction of the judge. These facts were capable of positive proof, directly or by circumstances. There was no requirement that the proof be by affidavit solely. The statute expressly stated that it might be made by affidavit of the judgment creditor "or otherwise." It was the clear duty of the moving party in that case to furnish proof. If he could not do so by his own positive affidavit, he might do so by some other means. To furnish an affidavit to conclusions which proof might establish, stating them not as facts, but as matters of belief and opinion, was not enough. The distinction between such a case and the one at bar is manifest. Nor is Mowry *v.* Sanborn, *supta*, in point. There the affidavit was not as to non-residence generally, but as to the exact place where persons, whose residence was known, in fact resided. Such known fact was capable of positive proof.

It is next contended that the land was not made a party to the foreclosure suit and that the court did not get jurisdiction over it

because it was insufficiently described. In the title to the petition and in the published notice it is described as the "Northwest quarter of section 27, township 31, range 3, west sixth principal
294 meridian," without stating in what county or State, nor whether the township in question is north or south of the base line. So far as the petition is concerned, however, the objection is clearly untenable for the reason that in the body of the pleading it is expressly stated that the land lies in Knox county, Nebraska. We think the notice sufficient also. The notice sets forth that plaintiff claims to have purchased said land for taxes at a tax-sale held in Knox county, Nebraska. Thus the context shows that land in this State is referred to, not merely by the venue of the proceedings, but by the nature of plaintiff's claim. Although the description is equally applicable to another tract situated in the State of Kansas, there is but one tract in this State to which it can possibly refer. In Fanning *v.* Krapfl, 68 Ia., 244, 26 N. W. Rep., 133, a published notice was directed to P. T. B. Hopkins, wife of John C. Hopkins." Said defendant's true name was "T. P. B. Hopkins." The court said: "The notice should describe the party to whom it is directed with such certainty as that neither he, nor other persons acquainted with or knowing him could reasonably be misled by it as to the person for whom it was intended * * * If the notice had come to her attention, she would have learned from it that it was intended for the wife of John C. Hopkins, which was the name of her own husband, and that it related to an interest in which W. K. I. Hopkins, who held the property now in question in trust for her, was trustee. She could hardly have failed to learn from it that she was the identical person for whom it was intended, and she could not reasonably have been misled by the transposition of the let-
295 ters of the Christian name which occurred in it." So in this case. No one who read the notice could reasonably suppose that it referred or might refer to lands in Kansas. There was a tract answering the description in Knox county, Nebraska, and the notice set forth that a lien was asserted against the tract by virtue of a tax-sale held in said Knox county. No one could well be misled by the omission of the word "north" under such circumstances. The same kind of descr-ption has been passed on several times where contained in deeds, and has been upheld always when there was but one tract answering the description in the State, if the context or circumstances indicated the State sufficiently. Long *v.* Wagner, 47 Mo., 178; Beal *v.* Blair, 33 Ia., 318; Butler *v.* Davis, 5 Nebr., 521. It may be admitted that the question to be determined in these cases was somewhat different. But the reasons assigned seem to us to be applicable. If the whole notice makes it clear what lands are referred to, we think it is enough. This holding does not conflict with the case of Cohen *v.* Trowbridge, 6 Kas., 385. In that case a notice failing to state whether the range in which the tract attached lay was east or west of the meridian, was held invalid. But there are two ranges numbered 18 in Kansas, and hence two tracts in that State were within the terms of the notice. The true rule is announced in Fanning *v.* Krapfl, *supra*.

A great many titles depend upon foreclosure proceedings based on service by publication. If no reasonable person can be misled by a description, we ought not to imperil titles by criticising it over minutely.

Coming now to the construction of sections 4 and 6, art. 5,
296 chap. 77, Compiled Statutes, we are satisfied that the former opinion is in every way a correct exposition thereof and that it should be adhered to. That the term "owner" as used in said section 4, refers to persons having estates in the land and not to incumbrancers and lien-holders, is made very plain. In what cases it may be said that the owner is "not known" within the meaning of said section, is a question of some difficulty. Is it meant that the condition of the title must be such that with ordinary diligence one who investigates can not pronounce in whom it lies? Or is it meant that the person in whom the title appears to be cannot be identified, located or found? If the latter, to whom must he be unknown, the plaintiff or the community generally in which the land lies? Or must he be absolutely unknown? As we have in this case a collateral attack on the decree of foreclosure, it may not be necessary to go deeply into the questions to which this apparently simple phrase gives rise. We think that the owner of the land is "not known" within the meaning of said section whenever the holder of a tax-certificate is unable by reasonable diligence and inquiry in the neighborhood of the land in question to ascertain the whereabouts of the person or persons appearing to have legal estates therein, or to ascertain who have such estates. In the latter case, he cannot know whom to make parties; in the former he cannot known how to serve them, since he does not know, nor can he ascertain, whether they are residents or non-residents of the State, and if residents, where they are to be reached. Hence, when the owner of the land is not known to the holder of a tax-certificate in either sense and can not be found upon reasonable inquiry, the holder of such certificate may make the land a party to foreclosure proceedings.
297 In such case, for reasons already set forth, allegations in the petition and an affidavit for service by publication on information and belief, to the effect that the owner is unknown, are sufficient against collateral attack. Van Fleet, Collateral Attack, secs. 245, 247.

The plaintiff in the tax-foreclosure suit joined one Root as a party defendant, alleging that he claimed some interest in the land; and we have next to consider the effect of this joinder. It has been seen that all persons having interests in the land in controversy are not for that reason "owners" within the meaning of the statute. Hence Root might have had an interest by way of lien or incumbrance, and yet the allegation that the owner was unknown might have been entirely true. So long as the land was properly made a party, it was unnecessary to join parties who merely claimed interests short of ownership. They would be cut out by decree and sale without being joined, under express provisions of the statute. We do not think that the nature of the proceeding was changed in any way by joining Root. The land was properly made a party and all

necessary steps to get it before the court were duly had. Whether the joinder of Root was irregular, we need not decide. The important point here is that the land was sued. If the plaintiff sued another defendant also, the propriety of such course is not to be reviewed collaterally. It may be remarked, however, that parties claiming interests in the land are often joined in cases like the one under consideration in other jurisdictions, and no questions appear to have been made but that the proceedings are nevertheless
298 *in rem* and bind others, claiming interest in the property, who have not been joined. Pritchard *v.* Marsden, 24 Kans., 249; Hunger *v.* Barlow, 39 Ia., 539; Nash *v.* Church, 10 Wis., 703.

Upon the question as to the effect of making the land a party and of sale under decree against the land, we are entirely satisfied with the construction put upon the statute in the former opinion. The provisions of the statute are express that "in case the land itself is made defendant in the suit, the deed shall be an absolute bar against all persons, unless the court proceedings are void for want of jurisdiction; the object and intent of this section being to create a new and independent title, by virtue of the sale, entirely unconnected with all prior titles." Sec. 6, art. 5, chap. 77, Compiled Statutes. There is every reason for construing this section to mean what it says. As remarked by Albert C., in the former opinion, the procedure for enforcing tax-liens is a part of the revenue system of the State. We can not assent to the argument of counsel that after the taxes have been sold to a private purchaser the State loses all concern with the matter, and it becomes purely a case of enforcing an ordinary lien, to be governed by the ordinary principles of private law. The State must provide some means for speedy collection, if it expects to sell its taxes. If the necessities of public affairs compel the State to sell taxes in order to get in revenues quickly, they also require that every proper inducement be held out to the tax-purchasers in order that taxes be readily saleable. The provision for foreclosure by the purchaser is much less drastic
299 than the common method of conveying the land outright to the tax-purchaser by an administrative act, without any judicial inquiry whatever. Moreover there is nothing novel or peculiar about the proceeding. It is known to the laws of many States, and has been given the full force and effect intended by the statutes. Pritchard *v.* Marsden, 24 Kan., 486; Chauncey *v.* Wass, 35 Minn., 1, 30 N. W. Rep., 826; Ball *v.* Ridge Copper Co., 118 Mich., 7, 76 N. W. Rep., 130; Freeman, Judgments, sec. 607. We agree to the conclusion reached at the former hearing, that if the land was properly made a party and jurisdiction over it was duly acquired by publication of notice, a sale under decree of foreclosure created a new and independent title and barred all pre-existing interests or liens.

The statute expressly awards to the purchaser at tax-sale a remedy by suit against the land itself, available whenever the owner is not known, whereby all persons claiming interest in the land may be barred completely on sale under decree of foreclosure. In so far as they give this remedy to the purchaser, are sections 4 and 6, art.

5, chap. 77, Compiled Statutes, in conflict with the provisions of the State and Federal Constitutions against depriving persons of property without due process of law? We think not. The power of the State to levy taxes obviously carries with it the power to collect them and to provide all means necessary or appropriate to insure and enforce their collection. "What method shall be devised for the collection of a tax, the legislature must determine, subject only to such rules, limitations, and restraints as the constitution of the State may have imposed. Very summary methods are sanctioned
300 by practice and precedent." Cooley, Constitutional Limitations, 521. Sale and issuance of a tax-deed creating a new title and cutting off liens and incumbrances, (Bagley *v.* Castile, 42 Ark., 77; Chambers *v.* People, 113 Ill., 509), levy and sale by a tax-collector (Springer *v.* U. S., 102 U. S., 586; Sawyer *v.* Dooley, 21 Nev., 390; 32 Pac. Rep., 437), issuance of a warrant by the treasurer and levy thereunder (Weimer *v.* Bunbury, 30 Mich., 201), making taxes a paramount lien, cutting out prior claims and incumbrances (Lydecker *v.* Palisade Land Co., 33 N. J. Eq., 415), imprisoning a delinquent collector on a writ of extent issued summarily (*In re* Hackett, 53 Vt., 354), issuance of execution by the tax-collector (State *v.* Allen, 2 McCord (S. C.), 56), seizure and forfeiture of the property taxed (Hendersons' Distilled Spirits, 14 Wall., (U. S.), 44), are some of the summary modes of collection which have been upheld. Also in Murray *v.* Hoboken Land Co., 18 How. (U. S.), 272, a statute authorizing a warrant to issue against a public debtor for seizure of his property, upon an ascertainment of the amount due by administrative officers, was held constitutional. As was said in *In re* Hacket, *supra:* "Taxes are the life-blood of government. Unless duly assessed, collected, and paid over to the proper disbursing officer, its functions are paralyzed and disintegration and anarchy are imminent." In consequence, so long as the tax is valid, all manner of summary proceedings to collect it have always been sanctioned, the stuatute providing for assessment and levy being held to afford due and sufficient notice. Counsel admit this, but contend that
301 summary methods can be employed only by the State itself, acting directly. They say: "The summary method by which a party may be divested of his interest in the lands without judicial procedure can be justified only when he is withholding moneys belonging to the State; beyond that the principle can not go." Again: "The foreclosure of the lien of a tax-certificate by judicial proceeding by a private party to realize the amount due under his lien is a judicial proceeding simply, in which the rights and powers of the sovereignty are not involved." We can not agree. The State must have its revenues. There is no summary administrative proceeding for collection of taxes upon land available under our statutes. Foreclosure is the sole method of enforcement. But the State can not wait the slow process of foreclosure and sale. Selling the tax and authorizing the purchaser to collect it is a method of collection almost as old as taxation itself. Under our statute, the State sells to a purchaser and gives to him the same remedy it would have had,

had it chosen or been able to wait. It is obvious that purchasers might not buy unless given some sure and speedy remedy. The interests of the State and its necessities demand that great inducements be held out to tax purchasers. Otherwise, the State would not get its revenues. Hence we see no reason why a remedy which the State may employ directly to collect its revenues may not be awarded to an assignee to whom the State has been obliged to sell its claim in order to realize promptly thereon. The right of the State to exercise other powers through individuals is undoubted. In the Slaughter House cases, 16 Wall., (U. S.), 36, Miller, J., said: "If this statute had imposed on the city of New Orleans precisely the same duties,
302 accompanied by the same privileges, which it has on the corporation which it created, it is believed that no question would have been raised as to its constitutionality. In that case the effect on the butchers in pursuit of their occupation and on the public would be the same as it is now. Why can not the legislature confer the same powers on another corporation, created for a lawful and useful public object, that it can on the municipal corporation already existing?" The exercise of the right of eminent domain by corporations is an every day occurrence, and sec. 39, art. 2, chap. 93*a*, Compiled Statutes, allows it to private individuals in furtherance of works of irrigation. If the State could authorize the county to proceed by suit against the land in case the delinquent owner was unknown, it could equally authorize a private purchaser of the taxes to maintain such proceeding, and for the same reasons.

We should not forget, however, that the proceeding in question is not summary in the sense in which that term may be applied to the usual run of methods of collecting taxes. It is not as if the purchaser were authorized to advertise and sell the land or to have the sheriff do so on request. He must wait the expiration of a long period of redemption. He must then bring a suit, make all proper parties if the owners are known, publish due notice upon showing by affidavit if they are not, make proper proofs of the levy and sale, and the amount due to a court, in a proceeding in which every person interested may intervene, and then, after decree of foreclosure, await the due course of judicial sale and confirmation. The opportunities afforded to all persons affected to make known their
303 claims are ample. They have no right to lie by and suffer the taxes to get many years in arrear without exercising any diligence to protect their claims.

We recommend that the former judgment be adhered to.

Barnes, C. and Oldham, C. concur

By the COURT: For the reasons stated in the foregoing opinion, the former judgment is adhered to.

304 And afterward, to-wit, on April 24, 1902, a mandate directing the district court of Knox county, Nebraska, to carry into effect the foregoing judgment of the said supreme court of Nebraska was duly issued and mailed to the clerk of the district court of said Knox county, Nebraska.

11043

And afterward on the 16th day of May 1902, there was filed in the office of the clerk of the said supreme court a certain motion in words and figures following, to-wit:

In the Supreme Court of the State of Nebraska.

ALVIN L. LEIGH, Appellee,
vs.
HENRY S. GREEN, Appellant. } Motion.

Comes now Alvin L. Leigh, appellee herein, and moves the court that the mandate heretofore issued herein, be recalled.

This motion is based upon the affidavit of O. C. Anderson hereto attached and the record in this action.

WOOLWORTH & McHUGH,
Attorneys for Appellee.

Endorsed: Doc. — page —. In the supreme court of the State of Nebraska. Alvin R. Leigh appellee *vs.* Henry S. Green appellant. Motion. Supreme court of Nebraska Filed May 16, 1902 Lee Herdman, clerk. Woolworth & McHugh, att'ys for appellee.

And on the same day there was filed in the office of the clerk of the said supreme court a certain affidavit in words and figures following, to-wit:

In the Supreme Court of the State of Nebraska.

ALVIN R. LEIGH, Appellee,
v.
HENRY S. GREEN, Appellant. } Affidavit.

305 STATE OF NEBRASKA, } *ss.*
County of Douglas, }

O. C. Anderson being first duly sworn according to law, on oath deposes and says that he is one of the attorneys of the appellee in the above entitled cause; that he has examined the records of the district court within and for the county of Knox, in the State of Nebraska, and that no term of said court has been held since the issuance of the mandate herein, and that no term of said district court will be held until the 3rd day of June, 1902.

O. C. ANDERSON.

Subscribed in my presence and sworn to before me, this 12th day of May, 1902.

FANNIE M. PRATT,
[SEAL.] *Notary Public, Douglas County, Nebraska.*

Jan'y 14, 1908.

Endorsed: Doc — 9838 page — In the supreme court of the State of Nebraska. Alvin R. Leigh, appellee, *vs.* Henry S. Green, appellant. Affidavit. Supreme court of Nebraska. Filed May 16, 1902, Lee Herdman, clerk Woolworth, McHugh & Carr, att'ys for appellee.

And afterward on the 17th day of May, 1902, there was filed in the office of the clerk of said supreme court, a certain notice in words and figures following, to-wit:

In the Supreme Court of the State of Nebraska.

ALVIN R. LEIGH, Appellee,
v.
HENRY S. GREEN, Appellant. } Notice.

To the above named appellant and his attorneys:

You are hereby notified that the appellee herein has filed a motion in the above entitled cause in the above court for an order recalling the mandate issued herein, which motion is based upon the affidavit of O. C. Anderson and the record of said cause, a copy of said motion and of said affidavit of O. C. Anderson is
306 hereto attached.

And you are further notified that said motion will be called up for hearing before said court at Lincoln on Tuesday May 20, 1902, at 9 a. m. or as soon thereafter as counsel can be heard.

WOOLWORTH & McHUGH,
Attorneys for Appellee.

Due service of the foregoing notice and of a copy of the motion and affidavit therein mentioned, is hereby confessed, this 16th day of May, 1902.

ED. P. SMITH &
W. R. GREEN,
Att'ys for Appellant.

Endorsed: Doc. — page — 9838 In the supreme court of the State of Nebraska. Alvin R. Leigh, appellee, *vs.* Henry S. Green, appellant, Notice. Supreme court of Nebraska, Filed May 17, 1902. Lee Herdman clerk. Woolworth & McHugh & Carr, attorneys for appellee.

And afterwards, to wit on the 20th day of May, 1902 there was rendered by said court and entered of record upon the journal thereof, a certain order in words and figures, following, to-wit.

ALVIN L. LEIGH, Appellee,
vs.
HENRY S. GREEN, Appellant. } Appeal from the District Court of Knox County. No. 9838. Order.

The appellee in the above entitled cause having filed a motion for the recall of the mandate heretofore issued herein, and the hearing of

said motion having been continued until Tuesday the 3rd day of June, 1902, it is ordered that until the hearing of said motion and the entry of the order determining the same, the said mandate heretofore issued herein be suspended and that no proceedings be had or taken under the mandate until the further order of this court.

Endorsed: May 20, 1902.

307 That on the *and* day of June, 1902 the following proceedings were had and done in the court:

The following cases were submitted on motion:

* * * * * * *

Leigh *vs.* Green. 9838 Appeal from Knox county.

* * * * * * *

And afterwards on the 18, day of June, 1902, there was rendered by said court and entered of record upon the journal thereof, a certain order in words and figures, following, to-wit:

308 In the Supreme Court of the State of Nebraska, June 18, 1902.

ALVIN L. LEIGH, Plaintiff and Appellee, v. H. S. GREEN, Defendant and Appellant.	Appeal from the District Court of Knox County. No. 9838. Judgment.

Now, at this time, to-wit: June 4, 1902, the plaintiff Alvin L. Leigh appearing by Woolworth & McHugh, Anderson & Keefe and C. C. McNish his attorneys, and defendant H. S. Green appearing by Ed. P. Smith and W. R. Green his attorneys, this cause comes on for hearing on the motion of the plaintiff to recall the mandate heretofore issued in this cause directed to the district court of Knox county, Nebraska, and the court being advised in the premises finds that said mandate was issued by error and mistake.

It is, therefore, ordered and adjudged by the court that said motion be sustained and that the said mandate be and the same is hereby recalled and all proceedings had thereunder, if any, be held for naught.

And this cause now coming on for judgment in this court, and the court being fully advised in the premises finds that the equities of this action are with the defendant H. S. Green. To which finding the plaintiff excepts.

The court further finds that said defendant is the owner of and entitled to the immediate possession of the following described premises situated in the county of Knox, and State of Nebraska, to wit: The northeast quarter (N. E. ¼) and the northwest quarter (N. W. ¼) of section twenty-seven (27), and the southwest quarter (S. W. ¼) and the northwest quarter (N. W. ¼) and the
309 south half (S. ½) of the southeast quarter (S. E. ¼) of section twenty-two (22), all in township thirty-one (31), north of range three (3) west of the 6th P. M. To which finding the plaintiff excepts.

The court further finds that the plaintiff Alvin L. Leigh has no right, title or interest in or to said premises or any part thereof, and that said petition should be dismissed. To which finding the plaintiff excepts.

The court further finds that said plaintiff wrongfully held possession and collected the rents and profits of the above-described premises for the years 1895 and 1896.

The court further finds that the reasonable rental value of said premises for said years was the sum of $1080.00 per annum, which the court finds is due and owing from the plaintiff to the defendant with interest at the rate of seven per cent. per annum from January 1, 1896, and from January 1, 1896, respectively.

It is therefore ordered, adjudged and decreed by the court that the title of the said defendant H. S. Green in and to the said premises above described be and the same is hereby quieted and confirmed against the plaintiff and all persons claiming by, through or under him, and that the said plaintiff and all persons claiming by, through or under him, any title or interest in said real estate be barred and forever estopped from making any claim thereto adverse to the interest of the said defendant therein, and that his action be dismissed.

It is further ordered, adjudged and decreed by the court
310 that the said plaintiff and all persons claiming by, through or under him, surrender the possession of said premises to the said defendant and that a writ of assistance issue to place the defendant in possession of said premises above described and each and every part thereof.

It is further ordered, adjudged and decreed by the court that the defendant H. S. Green, have and recover of and from the plaintiff Alvin L. Leigh the sum of $2992.60, being the amount of the rents and profits of said premises for the years 1895 and 1896, with interest thereon up to the first day of the present term of court, at the rate of seven per cent. per annum, and that this judgment draw interest from the date last named at the rate of seven per cent. per annum.

It is further ordered and adjudged that the said plaintiff H. S. Green have and recover of and from the defendant their costs and charges of this action in this court taxed at $— and the costs and charges of this action accruing in the district court of Knox county, Nebraska, which are hereby directed to be certified by the clerk of said court to the clerk of this court and when so certified to be taxed as costs herein.

It is further ordered and adjudged that execution issue in favor of the said defendant and against the said plaintiff for the satisfaction of the several amounts herein found due the defendant from the plaintiff, including said costs. To all the foregoing findings, orders and judgment in so far as the same are adverse the said plaintiff at the time duly excepts.

311 The following certificate states the costs entered and taxed in the supreme court of Nebraska, in conformity with the foregoing order.

"I, Lee Herdman clerk of the supreme court of said State do hereby certify that the costs in an action lately pending in said court, wherein, Alvin L. Leigh was appellee and H. S. Green was appellant, have been taxed in conformity with a judgment rendered by said court in said cause on June 18, 1902, and are as follows:

Costs due in the district court of Knox county by the plaintiff, Alvin L. Leigh:

Due for depositions	$6.00
Due defendant Green	4.00
Due witnesses	4.00
Due Knox county	1.00
Due Clerk Harris	23.25
Due Clerk Saunder	9.65
Total	$47.90

Due in supreme court by appellee, Alvin L. Leigh to the appellant H. S. Green, as follows:

For amount advanced upon clerk's fees at the commencement of suit in supreme court	$2.50
For transcript	10.50
For briefs	54.70
Total due appellant Green by appellee Leigh	$67.70

Clerk's fees in said cause in said supreme court owing by appellee Leigh, $40.40, paid by said appellee, as all of the same appears of record in my said office.

In testimony whereof, I have hereunto set my hand and caused to be affixed the seal of said court at Lincoln, this 11th day of July, 1902.

[Seal Supreme Court of Nebraska.]

LEE HERDMAN, *Clerk*,
By E. W. NELSON, *Deputy*.

312 In the Supreme Court of the State of Nebraska.

ALVIN L. LEIGH, Appellee,
v.
HENRY S. GREEN, Appellant.

To the Honorable J. J. Sullivan, chief justice of the supreme court of the State of Nebraska:

The above named plaintiff in the above entitled cause, wherein the said Alvin L. Leigh is appellee and plaintiff, and Henry S. Green is appellant and defendant, conceiving himself aggrieved by the order and decree made and entered by the above named court in the said cause, petitions said court for an order allowing said Alvin L. Leigh to prosecute a writ of error to the honorable the Su-

preme Court of the United States under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error; and that upon the giving of such security, all further proceedings in the supreme court of the State of Nebraska, be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

And your petitioner will ever pray, etc.

W. D. McHUGH,
Att'y for Pl'ff in Error.

[Endorsed:] 9838 Alvin L. Leigh *vs.* Henry S. Green Petition for writ of error Supreme court of Nebraska. Filed Jul- 28 1902 Lee Herdman, clerk.

313 In the Supreme Court of the State of Nebraska.

ALVIN L. LEIGH, Appellee,
v.
HENRY S. GREEN, Appellant.

Upon the trial and hearing of said cause in the supreme court of the State of Nebraska, the question of the constitutional validity of that certain act or statute of the State of Nebraska being sections four and six of article 5 of chapter 77 of the Compiled Statutes of said State, was drawn in question; the said plaintiff and appellee Alvin L. Leigh by his counsel, contended that the said statute violated the fourteenth amendment of the Constitution of the United States because it deprived him of his property without due process of law; and that the proceedings alleged by the said Green, the defendant and appellant in said cause, were void because they did not provide for the service of any notice to the grantors of said Leigh in the tax foreclosure proceedings under which the said Green claimed title.

And it is further certified by the undersigned, that said contention of the said Leigh was, upon the argument and consideration thereof, overruled by the said court and by reason thereof, judgment was rendered in favor of the said Green and against the said Leigh.

J. J. SULLIVAN,
Chief Justice of the State of Nebraska.

[Endorsed:] 9838 Alvin L. Leigh *vs.* Henry S. Green. Certificate Supreme court of Nebraska Filed Jul- 28 1902 Lee Herdman clerk.

314 In the Supreme Court of the State of Nebraska.

ALVIN L. LEIGH, Appellee,
v.
HENRY S. GREEN, Appellant.

Now comes Alvin L. Leigh by William D. McHugh his attorney and complains that error has intervened in the proceedings and judgment in that certain cause lately depending in said supreme court of the State of Nebraska, wherein Alvin L. Leigh was plaintiff and Henry S. Green was defendant, and assigns the following errors committed by the said court in the said cause.

First. The said supreme court erred in holding and deciding against the contentions of the said Alvin L. Leigh, that certain pretended act or statute of the said State of Nebraska, being sections four and six of article 5 of chapter 77 of the Compiled Statutes, was not in conflict with the provisions of the fourteenth amendment to the Constitution of the United States. The said sections are in the following words:

SEC. 4. Service of process in causes instituted under this chapter shall be the same as provided by law in similar causes in the district courts, and where the owner of the land is not known, the action may be brought against the land itself, but in such case the service must be as in the case of a non-resident; if the action is commenced against a person who disclaims the land, the land itself may
315 be substituted by order of court for the defendant, and the action continued for publication.

SEC. 6. Deeds shall thereupon be executed by such sheriff, which shall vest in the purchaser, the same title that was vested in the defendant to the suit, at the time of the assessment of the tax or taxes against the same; and such deed shall be an entire bar against the defendant to such suit, and against all parties or heirs claiming under such defendants; and in case the land itself is made defendant in the suit, the deed shall be an absolute bar against all persons, unless the court proceedings are void for want of jurisdiction; the object and intent of this section being to create a new and independent title, by virtue of the sale, entirely unconnected with all prior titles.

Second. The said supreme court of the State of Nebraska erred in holding and deciding that the said pretended statute of said State was valid.

Third. The said court erred in holding that the proceedings whereby the said Alvin L. Leigh was foreclosed, were effectual to bind and foreclose his interests in the premises in the pleadings described.

Fourth. The said court erred in holding that the said proceedings for the pretended foreclosure of the interests which have come to the said Alvin L. Leigh were valid and effectual for that purpose.

W. D. McHUGH,
Att'y for Pl'ff in Error.

[Endorsed:] 9838. Alvin L. Leigh *vs.* Henry S. Green. Assignment of error. Supreme court of Nebraska. Filed Jul- 28 1902 Lee Herdman clerk.

316 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Nebraska, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said supreme court of the State of Nebraska before you or some of you, being the highest court of law or equity of said State in which a decision could be had in said suit between Alvin L. Leigh, plaintiff and appellee, and Henry S. Green, defendant and appellant, wherein was drawn in question the validity of a statute of said State on the ground of its being repugnant to the Constitution and laws of the United States, and the decision was in favor of such, its validity, a manifest error had happened to the great damage of the said Alvin L. Leigh, as by his complaint appears:

We being willing that error if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States together with this writ so that you may have the same at Washington on the 13th day of October next in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 22nd day of July
317 1902.

[Seal United States Circuit Court, District of Nebraska.]

GEO. H. THUMMEL,
Clerk of the Circuit Court of the United States.

Allowed by J. J. Sullivan, chief justice of the supreme court of the State of Nebraska.

J. J. SULLIVAN,
Chief Justice of Supreme Court, Nebr.

[Endorsed:] 9838. Alvin L. Leigh *vs.* Henry S. Green. Writ of error and order allowing writ of error. Supreme court of Nebraska. Filed Jul- 28 1902. Lee Herdman, clerk.

318 UNITED STATES OF AMERICA, ss:

The President of the United States to Henry L. Green, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the city of Washington in the District of Columbia, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Nebraska, wherein Alvin L. Leigh is plaintiff and you are defendant in error, to show cause, if any there be why the judgment in the said writ of error mentioned should not be corrected, and justice should not be done to the parties in that behalf.

Witness, the Honorable J. J. Sullivan, chief justice of the supreme court of the State of Nebraska, this 22nd day of July, A. D. 1902, and of the Independence of the United States the 126th.

J. J. SULLIVAN,
Chief Justice of the Supreme Court of the State of Nebraska.

Due service of this citation accepted July 24th 1902.

HENRY L. GREEN,
By W. R. GREEN,
ED. P. SMITH,
His Attorneys.

[Endorsed:] 9838 Alvin L. Leigh *vs.* Henry S. Green Citation & service Supreme court of Nebraska Filed Jul- 28 1902 Lee Herdman clerk.

319 In the Supreme Court of the State of Nebraska.

ALVIN L. LEIGH, Appellee,
v.
HENRY S. GREEN, Appellant.

Know all men by these presents: That we, Alvin L. Leigh as principal and J. C. Crawford, R. C. Peters and F. J. Fitzgerald as sureties, are held and firmly bound unto Henry S. Green in the sum of five thousand ($5000) dollars to be paid to the said Henry S. Green, his successors or administrators, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally and our and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated this 7th day of July, 1902.

Whereas, the above named Alvin L. Leigh has sued out a writ of error to the supreme court of the State of Nebraska, to reverse the judgment in the above entitled cause rendered by the said supreme court of the State of Nebraska,

Now therefore, the condition of this obligation is such, that if the above named Alvin L. Leigh shall prosecute said writ to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise, to remain in full force and virtue.

ALVIN L. LEIGH.
J. C. CRAWFORD.
R. C. PETERS.
F. J. FITZGERALD.

Bond approved this 23d July, 1902

J. J. SULLIVAN,
Chief Justice of Nebraska.

Ordered that Alvin L. Leigh mentioned in the above bond, give security in the sum of $5000 for the performance of the conditions stated in said bond.
Dated, —.

J. J. SULLIVAN,
Chief Justice of the State of Nebraska.

[Endorsed:] 9838. Alvin L. Leigh *vs.* Henry S. Green. Bond. Supreme court of Nebraska. Filed Jul- 28 1902 Lee Herdman, clerk.

320 In the Supreme Court of the State of Nebraska.

THE STATE OF NEBRASKA, *ss:*

I, Lee Herdman, clerk of the supreme court of the State of Nebraska, do hereby certify that the foregoing is a true and correct copy of the transcript, record, opinions filed by the court, orders and final judgment in the cause in said court, wherein Henry S. Green was appellant and Alvin L. Leigh was appellee, as fully as the same is of record and on file in my office.

I further certify that the annexed petition for writ of error, statement by the chief justice of this court, assignment of error, order allowing writ of error, *writ of error*, endorsed upon the writ of error, writ of error, citation and service thereof, order allowing supersedeas bond, endorsed upon the supersedeas bond, and supersedeas bond are the originals which were lodged in my office, and the whole is now returned in obedience to the said writ of error.

I further certify that I have duly retained in my office true and correct copies of said petition for writ of error, statement by the chief justice of this court, assignments of error, order allowing writ of error, endorsed upon the writ of error, writ of error, citation and service thereof, order allowing supersedeas bond, endorsed upon the supersedeas bond, and supersedeas bond with the endorsements thereon.

In testimony whereof, I have hereunto set my hand and the seal of said court at Lincoln, this 4th day of Aug., 1902.

[Seal Supreme Court of Nebraska.]

LEE HERDMAN,
Clerk of the Supreme Court of Nebraska,
By E. W. NELSON, *Deputy.*

Endorsed on cover: File No. 18,650. Nebraska supreme court. Term No. 422. Alvin L. Leigh, plaintiff in error, *vs.* Henry S. Green. Filed August 18th, 1902.

FILE COPY.

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JAMES H. McKENNEY,
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In the Supreme Court of the United States.

October Term, 1903.

No. 119.

ALVIN L. LEIGH,
Plaintiff in Error,

v.

HENRY S. GREEN,

Brief for the Plaintiff in Error.

J. M. WOOLWORTH,
W. D. McHUGH,
Attorneys for the Plaintiff in Error and of Counsel.

11050

In the Supreme Court of the United States.

October Term, 1903.

No. 119.

ALVIN L. LEIGH,
Plaintiff in Error,

v.

HENRY S. GREEN,

Brief for the Plaintiff in Error.

This was a suit in equity brought in the District Court of Knox County, Nebraska, by the plaintiff in error, to establish his title in the lands in question, and have the title of the defendant set aside and held for naught, and to enjoin him from claiming the lands and interfering with the plaintiff's possession thereof. The plaintiff recovered judgment in the District Court. On appeal, the Supreme Court reversed the judgment, and the plaintiff brings this writ of error.

The plaintiff in error claims title under the following proceedings:

On the 4th of December, 1880, Erwin Davis was the owner in fee of the north-east and the north-west quarters of section twenty-seven and the south-west quarter and the north-west quarter and the south half of the south-east

quarter of section twenty-two all in township thirty-one, north of Range Three, west of the Sixth Principal Meridian in Knox County, Nebraska. On that day, one Algernon S. Patrick commenced his action in the District Court of that County against Davis to recover several large sums of money, and sued out of said court an order of attachment which was duly levied on said lands. The action was removed to the Circuit Court of the United States for the District of Nebraska, where judgment was rendered for Patrick with an order that the lands be sold by the marshal to pay the judgment. Under that process, the marshal sold the lands to Lionel C. Burr; and the court confirmed the sale and ordered the officer to convey the lands to the purchaser. On the 19th of May, 1894, the marshal made his deed accordingly; and on the same day Burr conveyed to James C. Crawford and Richard C. Peters, who, with their respective wives, conveyed to the plaintiff.

In 1886 the county levied taxes on the lands, which became delinquent. The lands were sold for the taxes to the Farmers' Loan & Trust Company, an Iowa corporation which received five certificates, one for each tract.

On the 30th of September, 1891, the Trust Company commenced five several actions in the District Court of Knox county, each for the foreclosure of one of said certificates. The defendants impleaded in each of these actions were Henry A. Root and the tract covered by one of the certificates. No appearance was made by any one in these actions. Decrees of foreclosure and sale were entered, upon which each parcel was sold to the defendent in error, to whom on the 16th of May, the sheriff conveyed the lands. During all the time above mentioned, Patrick lived in Omaha, Nebraska.

The statute of the state, giving to the holder of a tax

certificate the right to foreclose his lien and sell the land is as follows: (Compiled St. (1897) p. 948, Chap. 77, Art. 5.)

"Section 1. That any person, persons or corporation having by virtue of any provisions of the tax or revenue laws of this state a lien upon any real property for taxes assessed thereon, may enforce such lien by an action in the nature of a foreclosure of a mortgage for the sale of so much real estate as may be necessary for that purpose, and costs of suit.

"Sec. 2. That any person, persons or corporation holding or possessing any certificate of purchase of any real estate, at public or private tax sale, or any tax deed, shall be deemed entitled to foreclose such lien under the provisions of this act, within any time not exceeding five years from the date of tax sale (not deed) upon which such lien is based; and provided, That the taking out of a tax deed shall in no wise interfere with the rights granted in this chapter.

"Sec. 3. All petitions for foreclosure or satisfaction of any such tax lien shall be filed in the district court in chancery, where the lands are situated.

"Sec. 4. Service of process in causes instituted under this chapter shall be the same as provided by law in similar causes in the district courts, and where the owner of the land is not known, the action may be brought against the land itself, but in such case the service must be as in the case of a non-resident; if the action is commenced against a person who disclaims the land, the land itself may be substituted by order of court for the defendant, and the action continued for publication.

"Sec. 5. All sales of lands under this chapter, by decree of court, shall be made by a sheriff or other person

authorized by the court, in the county where the premises or some part of them are situated.

"Sec. 6. Deeds shall thereupon be executed by such sheriff, which shall vest in the purchaser, the same title that was vested in the defendant to the suit, at the time of the assessment of the tax or taxes against the same; and such deed shall be an entire bar against the defendant to such suit, and against all parties or heirs claiming under such defendants; and in case the land itself is made defendant in the suit, the deed shall be an absolute bar against all persons, unless the court proceedings are void for want of jurisdiction; the object and intent of this action being to create a new and independent title, by virtue of the sale, entirely unconnected with all proper titles.

"Sec. 7. The proceeds of every sale made under a decree, by virtue of this chapter, shall be applied to the discharge of the debt, adjudged by the court to be due, and of the costs awarded, and if there be any surplus it shall be brought into court for the use of the defendant, or of the person entitled thereto, subject to the order of the court.

"Sec. 8. If such surplus, or any part thereof, shall remain in court, for the period of three months, without being applied for, the court may direct the same to be put out at interest, under the direction of the court, for the benefit of the defendant, his representatives, or assigns, to be paid to them by the order of the court; the party to whom said surplus shall be loaned to be designated by the court, and the sureties, upon which said money is loaned, to be applied by the judge.

"Sec. 9. All lands sold by the sheriff by virtue of this act, shall be appraised, advertised, and sold as upon execution, and the title conferred by his deed shall be entitled to all the presumptions of any judicial sale.

"Sec. 10. This act shall be construed as cumulative and not exclusive, in respect to the remedy for enforcing liens, and collecting delinquent taxes, by sale of property or otherwise, in the cases herein provided for, and shall in no wise interefere with, alter, or amend the existing revenue laws of the state."

In his petition the plaintiff offered to pay whatever sum shall be found due for taxes, so that the action is to redeem the lands, although the prayer is to set aside the proceedings on the foreclosure.

The proceedings provided in this Act are in their nature distinctively judicial and not in any sense administrative. They are to be prosecuted in a court of general jurisdiction. But, besides the act gives to the holder of a certificate of purchase at tax sale, an action in the nature of a mortgage foreclosure, so that we have, first, a judicial court in which proceedings are to be had; and secondly, those proceedings for the foreclosure of a lien.

And the Act has been construed by the Supreme Court of the state in one important particular. Section 4 provides that when the owner is not known, the action may be brought against the land. The State Court construing this clause held (pp. 179, 180 and 193,) that the word "owner" means the owner of the fee, and does not include within its circumscription, a person holding a lien—the consequence being, that the Act does not provide that such lienholder, although known to the plaintiff and within the jurisdiction of the Court, shall be made a party or be notified of the action.

And section six provides that the deed to be made by the sheriff under the decree of foreclosure shall be an absolute bar against all persons.

The result is, that a lienholder will be concluded by a judgment in a judical action, to which he cannot be a party and of which he has no notice.

The plaintiff assigns error as follows:

First. The said Supreme Court erred in holding and deciding against the contentions of the said Alvin L. Leigh, that certain pretended act or statute of the said State of Nebraska, being sections four and six of Article 5 of chapter 77 of the Compiled Statutes, was not in conflict with the provisions of the Fourteenth Amendment to the Constitution of the United States. The said sections are in the following words:

Sec. 4. Service of process in causes instituted under this chapter shall be the same as provided by law in similar causes in the District Courts, and where the owner of the land is not known, the action may be brought against the land itself, but in such case the service must be as in the case of a non-resident; if the action is commenced against a person who disclaims the land, the land itself may be substituted by order of court for the defendant, and the action continued for publication.

Sec. 6. Deeds shall thereupon be executed by such sheriff, which shall vest in the purchaser, the same title that was vested in the defendant to the suit, at the time of the assessment of the tax or taxes against the same; and such deed shall be an entire bar against the defendant to such suit, and against all parties or heirs claiming under such defendants; and in case the land itself is made defendant in the suit, the deed shall be an absolute bar against all persons, unless the court proceedings are void for want of jurisdiction; the object and intent of this section being to create a new and independent title, by virtue of the sale, entirely unconnected with all prior titles.

Second. The said Supreme Court of the State of Nebraska erred in holding and deciding that the said pretended statute of said State was valid.

Third. The said court erred in holding that the proceedings whereby the said Alvin L. Leigh was foreclosed, were effectual to bind and foreclose his interests in the premises in the pleadings described.

Fourth. The said court erred in holding that the said proceedings for the pretended forclosure of the interests which have come to the said Alvin L. Leigh were valid and effectual for that purpose.

I.

We admit the rule in all its length and breadth, that the legislature may adopt the most summary, stringent and arbitrary administrative measures to compel the payment of taxes. For our present purpose, it may be admitted that the legislature may authorize the forfeiture of lands upon which taxes have been assessed and levied but have not been paid when due, without notice to the owner of the assessments or the levy, or of his delinquency, or of the forfeiture. The maxims and principles which protect the property of the citizen against proceedings which operate to divest him of his property without due process of law, are inappropriate to those which are intended to compel the payment of taxes. But when the State goes into its courts and invokes their power, in order to aid and give effect to such administrative proceedings, another principle obtains. In doing so it abdicates its sovereignty and puts itself on the footing of any one of its subjects. The same principles and rules which govern private citizens when seeking redress of their grievances, in the judicial courts, governs the State when it becomes a suitor or consents to be sued.

In the *United States v. Aredondo*, 6 Peters 691, it is stated (p. 734) that a controversy arose between the Captain General of Cuba and the intendant of the Island as to the superintendency of the royal domain of the Floridas. These lands had been in the possession of the Allachua Indians, but they had been abandoned before any grant was made by the intendant. A report was made by the attorney and surveyor General, on reference to them, finding the fact of abandonment on which it was decreed that the land had reverted to and become annexed to the royal domain, and the power to convey the same was vested in the intendant.

In *Mitchell v. the United States*, 9 Peters 711, 742, the Court speaking by Mr. Justice Baldwin of Aredondo's case, said:

"Considering this to be a judicial act in the nature of an inquest of office, and the decree of the intendant as making the fact a *res adjudicata*, we did not feel at liberty to look behind it for the evidence on which it was founded; the consequence of which was, that by the judgment of a competent tribunal, the land was part of the royal domain, subject to the disposition of the intendant. There is no pretense of a similar proceeding having been had in relation to these lands; nor could there well be in opposition to the evidence in the record, especially the report of the assessor-general, in 1817, that they were the lands of the Seminoles at the time of the cession by them, and the confirmation by Governor Folch. By the common law the king has no right of entry on lands which is not common to his subjects; the king is put to his inquest of office, or information of intrustion, in all cases where a subject is put to his action; their right is the same, though the king has more convenient remedies in enforcing his. If the king has no original right of possession to lands, he cannot acquire it without office found, so as to annex it to his domain."

In *Brent v. Bank of Washington*, 10 Pet. 596, the facts were these: Robert Brent, a paymaster in the Army died, leaving a will, and owning 659 shares of the stock of the bank of Washington, to which he was indebted on three notes. The charter of the Bank provided that "all debts actually due and payable to the Bank by a stockholder requesting a transfer, must be satisfied before such transfer shall be made, unless the president and directors shall direct to the contrary," and that "the shares of capital stock

at any time owned by any individual stockholder shall be transferable only on the books of the Bank according to such rules as may, conformably to law, be established in that behalf by the president and directors." Brent was also indebted to the United States upon his accounts as paymaster. The executors called on the Bank to allow them to transfer the stock. This was refused upon the claim that the Bank had a lien for the amount of the notes. Thereupon, the executors filed their bill for a decree to transfer the stock discharged from any lien of the Bank, on the ground that Brent being a debtor to the United States, and his estate being insufficient to pay his debts, the United States ought to be first paid, under the Act of Congress providing that where any officer of the United States, being indebted to them, shall become insolvent, or the estate of any deceased debtor shall be insufficient to pay all of his debts, that due the United States shall be first satisfied.

The Court treated the case as a bill filed by the United States in the name of the executors; and the question was whether they were entitled to the transfer of the stock free from the debt to the Bank.

Mr. Justice Baldwin delivering the opinion of the court, said:

"The United States have no pretense of a legal right to a transfer of the stock to themselves, or to recover damages for refusing it: the right to hold the stock devolves on the executors, to whose hands it must come for sale and distribution: the proceeds, not the stock, go to the United States in virtue of their priority: such are the words of the law—'the estate of any deceased debtor in the hands of executors or administrators'. Thus compelled to come into equity for a remedy to enforce a legal right, the

United States must come as other suitors, seeking, in the administration of the law of equity, relief; to give which, courts of law are wholly incompetent, on account of the legal bar interposed by the bank. This court, in the *United States v. Mitchell*, 9 Peters 743, have recognized the principle in the common law, that though the law gives the king a better or more convenient remedy, he has no better right in court than the subject, through whom the property claimed comes to his hands. 2 Co. Inst. 573; 2 Ves. Sen. 296, 297; Hard. 60, 460. This principle is also carried into all the statutes, by which the appropriate courts are authorized to decide, and under which they do decide on the rights of a subject in controversy with the king, according to equity and good conscience between subject and subject. 7 Co. 19; 6 Hard. 27, 170, 230, 502; 4 Co. Inst. 190."

Smoot's case, 15 Wall. 36, was an action in the Court of Claims to recover damages for breach of contract for the sale of horses to the government. When the contract was made, the usual course of business was for the contractor to buy his horses subject to inspection, and present them for inspection when they were immediately examined in the presence of the owners; if satisfactory, they were accepted; if not, they were rejected and returned to the owner. Afterwards the bureau of cavalry issued an order which required that each horse be placed in the inspection yard twenty-four hours before inspection; when all persons but the inspector and his assistants should leave the yard until after the inspection and branding. All rejected horses were to be branded; horses rejected and presented to the government without notice of that fact should be deemed a fraud, and be branded on the left shoulder as a fraud. Other effects followed the order, prejudicial to the

contractor. Smoot complained of the order to the Chief of Cavalry, but without effect, and was unwilling to deliver any horses under the new order. The Court of Claims found that his fair profits would have been $10.00 a horse, and gave him on his contract, $20,000. The United States appealed. It was urged in behalf of the vendor that a much more liberal rule ought to be applied in such cases, in favor of parties, on account of the power and resources of this great government.

Mr. Justice Miller, speaking for the Court, said on this point:—

"In approaching the inquiry into the effect which the action of the bureau of cavalry, in adopting these new rules for inspection, had upon the rights of the parties to this contract, let us endeavor to free ourselves from the consideration that the government was one party to the contract, and that it was for a large number of horses; for we hold it to be clear that the principles which must govern the inquiry are the same as if the contract were between individuals, and the number of horses one or a dozen instead of four thousand."

In the *State v. Kennedy*, 60 Nebr. 300, the facts were these: Acting under a statute, the Governor appointed Peabody and three others the Fire and Police Commissioners for the city of Omaha. An information in the nature of a writ of *quo warranto* was filed questioning the validity of the act under which the Governor appointed them. Pending this proceeding, the Mayor and Council of the city of Omaha provided by ordinance for such a board, and appointed Collins and three others, commissioners. These men intervened in the action and set up their claims insisting that the ordinance was valid and the statute invalid. Judgment was rendered against the Governor's appointees and ousted

them from office and the appointees of the Mayor and Council were installed in their places. The present case was an information in the nature of a *quo waranto* calling on the appointees of the Mayor and Council to show the authority under which they were acting.

Mr. Justice Sullivan speaking for the Court, said:

"One of the defenses interposed by the respondent is that the judgment in the Moores Case, whether right or wrong, is binding and conclusive upon the parties to this litigation. Counsel for the interveners, on the other hand, contend that while the doctrine of the *res adjudicata* applies to ordinary suitors, it has no application to a sovereign state. The question thus raised is an important one, and we have given it careful consideration, reaching the conclusion after much reflection and thorough investigation of the authorities that when a state invokes the judgment of a court for any purpose, it lays its sovereignty aside and consents to be bound by the decision, whether such decision be favorable or adverse. While the state as a political community is not obliged to submit to the jurisdiction of its own courts, it ought, in reason and justice, to be bound whenever it voluntarily appears in court and without reservation submits a matter in controversy for adjudication. The courts possess a portion of the sovereign power; they have authority to decide between litigants; and authority to decide implies, always, power to make their judgments effective. It is said by Mr. Justice White in *New Orleans v. Citizens Bank*, 167 U. S. 371, 399, that the very essence of judicial power is that when a matter is once ascertained and determined, it is forever concluded when it arises again under the same circumstances and conditions between parties or their privies. It is claimed by counsel for the interveners that there is

a distinction between the effect of a judgment for or against a state, when appearing as a suitor in its corporate capacity, and the effect of a judgment upon a matter pertaining to its sovereignty. The authorities, excepting perhaps *State v. Cincinnati Gas Light & Coke Co.*, 18 Ohio St., 262, give no countenance to the claim. In 7 Comyn's Digest, title '*quo warranto*,' 201, it is said: 'The judgment in *quo warranto* is final; for it is in the nature of a writ of right. And, therefore, if judgment be against the king, the king shall be forever bound as to the thing adjudged.' In 3 Blackstone's Commentaries, p. 263, the author says: 'The judgment on a writ of *quo warranto* (being in the nature of a writ of right) is final and conclusive, even against the crown.' 'And such substantially,' said Lewis P. in *Shumate v. Fauquier County*, 84 Va., 574, 'is the effect of a judgment in the more modern proceeding by information in the nature of a *quo warranto*.' In *McClesky v. State*, 4 Tex. Civ. App. 322, 23 S. W. Rep. 518, which was a proceeding by information in the nature of a *quo warranto* to dissolve the incorporation of a town, it was held that a former judgment in favor of the respondents in a similar proceeding, was, under the doctrine of *res adjudicata*, binding and conclusive on the state. *People v. Holladay*, 93 Cal., 241, 27 Am. St. Rep. 186, was an action by the state, on the relation of the attorney general, to abate an alleged nuisance, caused by the erection of fences and construction of buildings upon Lafayette Park in the city of San Francisco.

"It had been previously determined in an action between Holladay and the city and county of San Francisco, that the property in question was not public ground, and the determination was held to be conclusive upon the state, it having been represented in the first cause by the municipality, which was a public agent acting within the scope

of its authority. In delivering the judgment of the court, DeHaven J. said, p. 248: 'The city and county of San Francisco is a municipal corporation created by the legislature of the state, and has conferred upon it by the state full power and jurisdiction over the public squares within its territorial limits, with the right to sue and be sued; and this necessarily includes the authority to maintain and defend all actions, relating to its right to subject to the public use such squares or land claimed by it to have been dedicated for such purposes; and in any action brought by it for the purpose of vindicating and protecting the public rights in such squares, or land claimed as such, the state would be bound by the result, because in such action the city and county would in fact represent the people of the state by virtue of the authority given it to maintain such actions for the purpose of preserving the public rights of which it is the trustee.' And further along in the opinion this language is used: 'The rule that the citizens shall not be twice vexed for the same cause of action is as binding upon the state as upon other litigants; and the legislature, in conferring upon the city power to maintain and defend in the courts the rights of the state to streets and squares within its limits, must be presumed to have done so with reference to this well known maxim, and to have intended that the state should be bound by the result of such litigation.' This decision is a direct authority against the contention of counsel for the interveners, for it is a case in which the state went into court to enforce its laws and vindicate the rights of the public to use and enjoy what was claimed to be a public park. To the same effect is *People v. Smith*, 93 Cal., 490, which was an action to abate a nuisance upon land alleged to be a public street. The controversy, of course, pertained to the sovereignty of the state; but the state was, nevertheless, held to be affected

by the doctrine of *res adjudicata*. The principles which controlled the California decisions are precisely the same as those which governed the decision in the case of *Holsworth v. O'Chander*, 49 Nebr. 42. The last named case is really decisive of the question which we are now considering. The essence of the decision is that a judgment against a public officer in regard to a public right is, under certain circumstances, binding upon the public; and that such officer is in privity with his predecessor. We reproduce here a portion of the opinion: 'We cannot upon this record doubt that the judgment here pleaded would have been a complete bar to a subsequent proceeding by Barnes, the plaintiff's prodecessor, in his official capacity to restrain the further interference by defendant's grantor with the alleged highway. The acts charged as the basis of the former action, and the interposition therein by the overseer named of his official character in justification, was but the assertion in behalf of the public, of a public right, by its accredited representative, acting within the scope of his authority. It was, in legal effect, an act of the public, not as a body corporate it is true, but according to its more comprehensive definition, which includes the people or community at large, without regard to the territorial limits of any town or county. The public is, in that enlarged sense of the term, a distinct legal entity, capable of acquiring rights by adverse use, and it may in turn lose such rights by nonuser. It was in that sense privy to the claim asserted in its behalf, and is accordingly concluded by the adverse result. The overseer of highways, against whom the first judgment was rendered, represented the state; he was acting in his official capacity and within the scope of his authority; and the judgment was binding upon his successor who, in relation to the matter in dispute, was exercising a portion of the sovereign power. The second over-

seer derived his powers from the state; he did not derive them from his predecessor; and he was bound and his authority limited only because the state was bound and its authority limited by the first judgment in favor of O'Chander. Quite like the case of *Holsworth v. O'Chander* is the recent case of *O'Connell v. Chicago T. T. R. Co.*, 184 Ill. 308, 56 N. E. Rep. 355, in which it was held that a judgment against a public corporation binds the public. In the case of *State v. Moore, supra*, it was decided that the state, acting through its governor, could not appoint fire and police commissioners for Omaha. That judgment is conclusive upon the state and, as a matter of course, is binding upon the governor and those claiming through or under him."

The Siren, 7 Wall. 152, was a libel against the Siren which had been captured in the harbor of Charleston in attempting to violate the blockade of that port, and put in charge of a prize master and crew and ordered to Boston for adjudication. While proceeding to that port, she ran into and sank the Sloop Harper.

Mr. Justice Field delivered the opinion of the court, in which he said:

"It is a familiar doctrine of the common law, that the sovereign cannot be sued in his own courts without his consent. The doctrine rests upon reasons of public policy; the inconvenience and danger which would follow from any different rule. It is obvious that the public service would be hindered and the public safety endangered, if the supreme authority could be subjected to suit, at the instance of every citizen, and consequently controlled in the use and disposition of the means required for the proper administration of the government. The exemption from direct suit is, therefore, without exception. This

doctrine of the common law is equally applicable to the supreme authority of the nation, the United States. They cannot be subjected to legal proceedings at law or in equity without their consent; and whoever institutes such proceedings must bring his case within the authority of some act of Congress. Such is the language of this court in *United States v. Clarke.*

"The same exemption from judicial process extends to the property of the United States, and for the same reasons. As justly observed by the learned judge who tried this case, there is no distinction between suits against the government directly, and suits against its property.

"But although direct suits cannot be maintained against the United States or against their property, yet, when the United States institute a suit, they waive their exemption, so far as to allow a presentation by the defendant of setoffs, legal and equitable, to the extent of the demand made or property claimed; and when they proceed *in rem,* they open to consideration all claims and equities in regard to the property libelled. They then stand in such proceedings, with reference to the rights of defendants or claimants, precisely as private suitors, except that they are exempt from costs and from affirmative relief against them, beyond the demand or property in controversy. In *United States v. Ringgold* a claim of the defendant was allowed as a setoff to the demand of the government. 'No direct suit', said the court, 'can be maintained against the United States. But when an action is brought by the United States to recover moneys in the hands of a party who has a legal claim against them, it would be a very rigid principle to deny to him the right of setting up such claim in a court of justice, and turn him round to an application to Congress.' So in the *United*

States v. MacDaniel, to which reference is made in the case cited, the defendant was allowed to set off against the demand of the government a claim for services as agent for the payment of the navy pension fund, to which the court heid he was equitably entitled. The question, said the court, was, whether the defendant should surrender the money which happened to be in his hands, and then petition Congress on the subject; and it was held that the government had no right, legal or equitable, to the money."

In many cases this rule has been applied.

Clark v. Barnard, 108 U. S. 436, 437.

Burrs v. Arkansas, 20 How. 271, 529.

Moore v. Tate, 87 Tenn. 725.

Greene v. State, 73 Cal. 29.

People v. Stephens, 71 N. Y. 527.

Southern Pacific Railroad Co. v. the United States, 183 U. S., 519.

If the State, by going into its courts for the purpose of invoking their powers in its behalf, puts itself on a footing with its citizens, a private party holding under the sovereign can be in no better condition. And such private party cannot claim any exemption which the State does not enjoy. But it is quite useless to press such a contention.

II.

Questions relating to taxation and to proceedings to compel the payment of taxes, when brought within the judicial cognizance, are not exceptions to what has been said. All of the judgments, in which the rule has been laid down that the State may adopt whatever measures it sees fit to enforce taxes, were where the proceedings in question were administrative; in none of them was the rule applied to judicial process.

Nor are we able to perceive any difference between a judicial act in the nature of an inquest of office and a judgment of a court to whose jurisdiction the state submits, involving the validity of taxes. In one as well as the other, the right of the state as against the citizen is the same as that in question between two citizens. The necessities of the State in the latter case are not involved in the judicial process as they are in administrative proceedings. Those necessities are satisfied by sale of the property taxed, or, if you please, by forfeiture without a sale. By the sale, the state realizes the amount due for the taxes, and by a forfeiture it acquires the estate which is all that can be obtained in any way. The reason of the rule does not therefore obtain when an action is brought by the state and carried into judgment.

Davidson v. New Orleans, 96 U. S. 97, was a petition of the city of New Orleans and the administrators thereof, setting forth an assessment on certain real estate, made under the statutes of Louisiana, for draining swamp lands within the parishes of Carroll and Orleans; and asking that the assessment be homologated by the judgment of the court. The estate of John Davidson was assessed for various parcels in different places for about $50,000. His

widow and testamentary executrix appeared in that court and filed exceptions to the assessment; and the court refused the order of homologation, and set aside the entire assessment, with leave to the plaintiffs to present a new tableau.

On appeal from this decree, the Supreme Court of Louisiana reversed it, and ordered the dismissal of the oppositions, and decreed that the assessment-roll presented be approved and homologated, and that the approval and homologation so ordered should operate as a judgment against the property described in the assessment-roll, and also against the owner or owners thereof. Mrs. Davidson then sued out the writ of error to review this judgment.

Mr. Justice Miller delivered the opinion of the Court, in which he examined with much learning and great discrimination, the phrase "due process of law." After pointing out the imminent risk of a failure to give any definition which would be at once perspicuous, comprehensive and satisfactory, he says that the result must be reached by the gradual process of judicial inclusion and exclusion, as the cases presented for decision may require, with the reasoning on which such decisions may be founded, and says:

"As contributing, to some extent, to this mode of determining what class of cases do not fall within its provision, we lay down the following proposition, as applicable to the case before us:—

"That whenever by the laws of a State, or by State authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be for the whole State or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the

ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections.

"It may violate some provision of the State Constitution against unequal taxation; but the Federal Constitution imposes no restraints on the States in that regard. If private property be taken for public uses without just compensation, it must be remembered that, when the Fourteenth Amendment was adopted, the provision on that subject, in immediate juxtaposition in the Fifth Amendment with the one we are construing, was left out, and this was taken. It may possibly violate some of those principles of general constitutional law, of which we could take jurisdiction if we were sitting in review of a Circuit Court of the United States, as we were in *Loan Association v. Topeka* (20 Wall. 655). But however this may be, or under whatever other clause of the Federal Constitution we may review the case, it is not possible to hold that a party has, without due process of law, been deprived of his property, when as regards the issues affecting it, he has, by the laws of the State, a fair trial in a court of justice, according to the modes of proceeding applicable to such a case."

This proposition is the converse of our contention; but it clearly implies that laws imposing taxes upon property which provide a mode of confirming or contesting the charge thus imposed in the ordinary courts of justice, without notice to the owner, the judgment deprives the owner of his property without due process of law. The whole course of reasoning of the learned judge justifies the inference that such would, in his opinion, be the rule.

In *Hagar v. Reclamation District* 111 U. S. 701, the Act under consideration was passed by the Legislature of California establishing a system for draining swamp and overflowed marsh, salt and tide water lands, and thus fitting them for cultivation. The Act provided for a Board which was to formulate and report to the Supervisors of the County, plans and estimates for the works. The supervisors were to appoint three commissioners to assess upon each acre of the lands to be reclaimed or benefited, a tax proportionate to the whole expense and to the benefits to result from the works. The commissioners were to make a list of the amounts due from each owner of land in the district and the amount due from each unsold tract, and file the same with the county treasurer. If the tax were not paid in thirty days thereafter, the District Attorney was to proceed against delinquents in the manner provided for the collection of state and county taxes. Thereupon, the District No. 108 brought an action against Hagar for a decree declaring that the sums assessed against his lands were liens thereon and for their sale to satisfy the charges. The case was removed to the Circuit Court of the United States, which held that the sums assessed were valid liens upon the lands, and ordered them sold for their payment and the defendant appealed. The appellant contended that he was afforded no opportunity to be heard respecting the assessment, and insisted that this was essential to render any proceeding due process of law.

Mr. Justice Field, delivered the opinion of the court, in the course of which he showed that taxes were of two classes; one of which was according to due process of law, although no notice was given to the owner or the party affected thereby; the other was where the tax was levied upon property according to its value to be ascertained by officers appointed for the purpose who act judicially.

After stating various provisions to be found in the statutes of the states for notices to the owners of property, he says:

"The assessment under consideration could, by the law of California, be enforced only by legal proceeings; and in them any defense going either to its validity or amount could be pleaded. In ordinary taxation assessments, if not altered by a Board of Revision or of Equalization, stand good, and the tax levied may be collected by a sale of the delinquent's property; but assessments in California, for the purpose of reclaiming overflowed and swamp lands, can be enforced only by suits; and, of course, to their validity it is essential that notice be given to the tax-payer and opportunity be afforded him to be heard respecting the assessment."

New Orleans v. The Citizens' Bank, 167 U. S. 371, was an action brought by the Bank against taxing officers of the State representing it, to restrain them from assessing the property and capital of the Bank for the purposes of taxation. The charter of the Bank provided that its capital should be exempt from any tax by the State or by any parish or body politic under the authority of the State during the continuance of its charter.

Five successive attempts were made to assess the Bank and petitions to enjoin them were filed and judgments were rendered in favor of the Bank enjoining the proceedings of the taxing officers. Two of them were in cases respecting the taxes of 1886 and 1887.

The Bank filed its bill in the Circuit Court of the United States against the city of New Orleans, the Board of State Assessors for the parish of Orleans, and the City Collectors for various collection districts in the Parish of Orleans, alleging that although the Bank was contractually exempt from state and municipal tax under its

charter and the acts supplemental thereto, the Board of Assessors were about to assess the Bank for the taxes of 1889, 1890, 1891 and 1892; and that the fact of the exemption claimed by the Bank, was conclusively determined by the judgments previously rendered between the parties. The prayer was for a restraining order and an injunction enjoining the Board of Assessors from taking the steps necessary to make the assessment, from completing the assessment and from collecting any tax thereunder, but allowing the assessors to obtain the necessary information from the Bank to make the assessment, and also the formal making of the assessment by the State Board to the final decision as to its legal right to assess the Bank, but restraining any attempt to collect any tax or to enforce any assessment after it was made under the conditions above stated until the final decision in the cause. Answers were filed denying the right of the Bank to the exemptions claimed. A decree was entered against the defendants enjoining the collection of taxes for designated years by the State of Louisiana and the city of New Orleans upon the capital, property and shares of stock of the shareholders of the Bank whether assessed against the Bank or its shareholders, and from demanding or collecting from the Bank, any state or city license tax. From this decree, the defendants appealed.

In all of the five suits, the same claims were made by the Bank against the state officers, by whom the same defenses were alleged.

Mr. Justice White delivered the opinion of the Court stating on page 387 that the question for decision was, "are not the judgments rendered between the Bank, the Board of Assessors, the city of New Orleans and the taxing

officers, absolutely conclusive under the principle of the thing adjudged, of the issue here presented?"

The learned judge confined the inquiry to the two judgments rendered by the District Court, one as to the taxes of 1886 and the other as to those of 1887.

He also found that there was an identity of the issue between the case under consideration and the judgment for the tax of 1886, and that of 1887 and says on page 395:

"It results from the foregoing, that the two judgments rendered after the expiration of the original charter necessarily adjudged the claim of exemption upon identically the same facts and conditions as those here presented, and they therefore are conclusive, unless the proposition be sound that a claim for taxes for one year, being a distinct cause of action from the tax for a subsequent year, the judgment holding that the tax of a prior year cannot be assessed or collected, can never be the subject of the thing adjudged as to the tax for the future year, however absolute may be the identity of the defence and of the facts upon which the defence is founded."

Upon very careful consideration, the learned judge found that a judgment holding that the tax of a prior year cannot be assessed, concludes the question as to the tax of a future year where there is an identity of the defence and the facts upon which the defence is founded, saying on page 398: "It follows, then, that the mere fact that the demand in this case is for a tax for one year, and the demands in the adjudged cases were for taxes for other years, does not prevent the operation of the thing adjudged, if, in the prior cases, the question of exemption was necessarily presented, and determined upon identically the same facts upon which the right of exemption is now claimed."

The learned judge then proceeds to consider whether

the rule of estoppel or, "the thing adjudged," applies to controversies as to taxation, and on that subject, says:

"The argument that as a matter of public policy the principle of the thing adjudged should be held not to apply to controversies as to taxation, if there be merit in it, should be addressed to the law-making and not to the judicial department. But if the judicial mind could entertain the suggestion, it seems clear that it is without real merit. In its ultimate aspect it asserts that no question concerning government or public authority ought ever to be submitted to judicial investigation. Indeed, the contention is that there is no power in courts of justice to consider any question of taxation or render any judgment in relation thereto. That this is the result of the proposition is manifest from the fact that the very essence of judicial power is, that when a matter is once ascertained and determined, it is forever concluded when it arises again under the same circumstances and conditions between parties or their privies. To admit the judicial power on the one hand, and to deny on the other the very substance and essence of such power, is not only contradictory, but destructive of the fundamental conceptions upon which our system of government is based. Under this theory, the cause under consideration should not be entertained, but should be dismissed. Accepting the argument in its full consequence, every judgment rendered by this court from the foundation of the government, declaring a particular tax or burden unconstitutional, imports no efficacy whatever. Every decree of this court enforcing taxation in order to discharge obligations previously contracted, where the right to the tax was a part of the obligation, is deprived of the sanctity of the thing adjudged, for, manifestly, if the estoppel of the thing adjudged does not arise from a judgment preventing taxation, such an estoppel cannot also result from a judgment enforcing taxation."

III.

What has been said eliminates from the inquiry the circumstances, first, that the defendant derives his rights from the State, which, if it were the party suing, would be subject to the rules governing actions between private parties, and, secondly, that the action, judgment, sale and deed in the foreclosure proceedings were to enforce the payment of taxes.

It remains to examine the statute and the proceedings to foreclose the tax liens in order to determine their validity. The statute changes the form of such proceedings from actions *in personam*, to actions *in rem*, and, by applying the rule in the latter that all the world is a party to them, attempt to avoid the necessity of bringing in lienholders personally. It does not contemplate a lienholder as a party or as having any connection with the suit, or as capable of intervening in it; nor any showing that Patrick who held an attachment lien on the land, when the foreclosure suits were brought, was a resident of the State, or known, or could be served with process. On the other hand, he lived at the time in Omaha, and his lien and what was its nature could easily have been learned by resorting to the Court for the county in which the lands were situate.

It is pertinent to inquire what is the nature of a proceeding *in rem*. This is answered by the judgment in *Freeman v. Alderson*, 119 U. S. 185.

On the 16th of July 1855, a tract of land was patented by Texas to Alderson. D. C. and G. R. Freeman claimed an undivided half of the tract and brought an action for partition against Alderson. He was a non-resident of the State, no personal service was made upon him, nor did he appear in the action. The citation to him was made by

publication. Judgment was rendered against him adjudging that the plaintiff recover his costs. The Commissioners reported to the Court that they had divided the lands into two equal parts. The Court confirmed the report and adjudged that the title to one of them was divested from Alderson and vested in the Freemans, and that they recover their costs and that execution issue therefor. Execution for the costs was levied upon the half of the tract adjudged to Alderson in the partition suit, which was sold to the grantor of D. C. Freeman, to whom the sheriff made a deed. Freeman then brought this action to recover the possession of Alderson's half of the tract. On the trial, he offered in evidence the judgment for costs, the execution issued thereon and the sheriff's deed; to the introduction of which the defendants objected on the ground that the judgment for costs was a judgment *in personam* and not *in rem*, and was rendered against the defendant who was a non-resident of the State, without his appearance in the action or personal service upon him, but upon a citation by publication only, and constituted no basis of title in the premises under the execution. The Court sustained the objection and excluded the documents from the jury. No other evidence of title being presented by the defendants, a verdict was found for the plaintiffs and judgment in their favor was entered thereon.

Mr. Justice Field delivered the opinion of the Court, saying:

"Actions *in rem*, strictly considered, are proceedings against property alone, treated as responsible for the claims asserted by the libellants or plaintiffs. The property itself is in such actions the defendant, and, except in cases arising during war for its hostile character, its forfeiture or sale is sought for the wrong, in the commis-

sion of which it has been the instrument, or for debts or obligations for which by operation of law it is liable. The Court acquires jurisdiction over the property in such cases by its seizure, and of the subsequent proceedings by public citation to the world, of which the owner is at liberty to avail himself by appearing as a claimant in the case.

"There is, however, a large class of cases which are not strictly actions *in rem*, but are frequently spoken of as actions *quasi in rem*, because, though brought against persons, they only seek to subject certain property of those persons to the discharge of the claims asserted. Such are actions in which property of non-residents is attached and held for the discharge of debts due by them to citizens of the state, and actions for the enforcement of mortgages and other liens. Indeed, all proceedings having for their sole object the sale or other disposition of the property of the defendant to satisfy the demands of the plaintiff, are in a general way thus designated. But they differ among other things, from actions which are strictly *in rem*, in that the interest of the defendant is alone sought to be affected, that citation to him is required and that judgment therein is only conclusive between the parties."

And the learned Judge says:

"Such action,(i. e. an action for partition of lands,) though dealing entirely with the realty, is not an action *in rem* in the strict sense of the term; it is an action against the parties named, and, though the recovery and partition of real estate are sought, that does not change its character as a personal action; the judgment therein binds only the parties in their relation to the property. The service of citation by publication may suffice for the exercise of the jurisdiction of the court over the property,

so far as to try the right to its possession, and to decree its partition; but it could not authorize the creation of any personal demand against the defendant, even for costs, which could be satisfied out of his other property."

Thus it appears that "actions for the enforcement of mortgages and other liens" are not actions *in rem* strictly considered. They differ from actions strictly *in rem*, among other things, in that the interest of the defendant is alone sought to be affected; that citation to him is required and that judgment therein is only conclusive between the parties.

Our concern with the statute is not because it attempts to transfer actions to foreclose a tax lien from the class called *in personam* to that called *in rem*. The legislature undoubtedly may have the power to regulate the form of remedies. Although it shocks our sense of propriety and runs counter to our habits, it may perhaps go so far as to substitute the property for the parties interested in it. Thus it may be competent for the legislature to provide that in an action to foreclose a mortgage, the mortgaged premises may be named as defendant without impleading the owner or other parties interested. But what is radically wrong in this statute is that it attempts by the judgment and proceedings which it authorizes, to conclude parties who have no notice of them, although resident within the jurisdiction and accessible to process and known to the plaintiff, and knowledge of the interests is easily ascertainable. If that can be done by the legislature simply by changing the form of the action, it can evade the fundamental principle in the jurisprudence of all civilized peoples that no judgment is of any validity against one not a party to the action in which the judgment is rendered. If a party can be condemned unheard

and his property be wrested from him, then the constitutional provision that no one shall be deprived of his property withou due process of law, is a fiction and a snare.

Tyler v. The Court of Registration,175 Mass. 71, was a writ of prohibition against the judges of the Court of Registration established by an Act of the Legislature, and was brought to prevent their proceeding upon an application concerning land in which the petitioner claimed an interest, on the ground that the Act was unconstitutional, because the registration deprived all persons of their property except the owner, without due process of law. The learned Chief Justice in an elaborate opinion expressed the view that the Act provided for a notice to the parties affected by the proceeding, although it was not personal and might not come home to them. Two of the judges were disinclined to that view and the three agreed to a ground of decision stated by the Chief Justice as follows:

"But perhaps the classification of the proceeding is not so important as the course of the discussion thus far might seem to imply. I have pursued that course as one which is satisfactory to my own mind, but, for the purposes of decision, a majority of the court prefer to assume that in cases in which under the constitutional requirements of due process of law, it heretofore has been necessary to give to parties interested actual notice of the pending proceeding by personal service or its equivalent, in order to render a valid judgment against them, it is not in the power of the Legislature, by changing the form of the proceeding from an action *in personam* to a suit *in rem*, to avoid the necessity of giving such a notice, and to assume that under this statute personal rights in property are so involved and may be so affected, that effectual

notice and an opportunity to be heard should be given to all claimants who are known or who by reasonable effort can be ascertained."

The other two judges dissented in an opinion delivered by Loring, J., holding that the act did not provide for service of notice upon which a judgment could be rendered.

These authorities establish the following propositions:

1. That an action to foreclose a tax lien is not strictly *in rem*, but is one only *quasi in rem* and in order to the validity of a judgment, there must be service of process or a notice equivalent thereto.

2. That when a person interested in property is known, and is a resident and within the jurisdiction, so that he can be personally reached by process, he cannot be cut off by a judgment in an action to which he is not a party and of which he has no notice.

IV.

It is no answer to say that the notice published in the newspaper ran to "all persons interested" in the land, for the statute does not authorize or contemplate such notice, or any notice to any one but the owner of the fee; and, besides, if notice by publication were authorized by statute, it must, to be effective, run to the parties to be reached by it and not to all interested parties without naming them.

The case is this: Patrick had a lien upon the land which was carried into judgment. A sale was made under which the plaintiff in error claims title.

After Patrick acquired his lien, taxes were levied on the land, and the land sold to the Farmers' Loan and Trust Company, which took not a deed, but only certificates of sale which gave it a lien. The Company brought its action to foreclose its lien, making the land the only defendant. It did not make Patrick a party. He was a resident of the state, and he could have been reached by process. The company knew or could have learned by examining the records, that Patrick had a lien and what was its nature. No notice was given to him. The statute did not contemplate impleading him in the action or giving him any notice of the action.

The statute attempts to cut off his interest.

The question is, Is that due process of law?

J. M. WOOLWORTH,
W. D. MCHUGH,
Attorneys for the Plaintiff in Error and of Counsel.

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FILE COPY.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

Office Supreme Court U. S.
FILED
JAN 6 1904
JAMES H. McKENNEY,
Clerk.

No. 119.

ALVIN L. LEIGH,
Plaintiff in Error.

vs.

HENRY S. GREEN,
Defendant in Error.

Motion to Dismiss.

W. R. GREEN,
ED. P. SMITH,

Attorneys for Defendant in Error.

REED PRINTING CO.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 119.

ALVIN L. LEIGH,
Plaintiff in Error.

vs.

HENRY S. GREEN,
Defendant in Error.

Motion to Dismiss.

The defendant in error, Henry S. Green moves the court to dismiss this cause for want of jurisdiction for the following reasons, to-wit:—

1. There was not drawn in question the validity of any statute of the State of Nebraska or any authority exercised under any statute of the State of Nebraska, nor was any federal right specially set up or claimed when this cause was presented to and tried in the District Court of the State of Nebraska.

2. No title, right, privilege or immunity was specially set up or claimed under the constitution of the United States by the Plaintiff in error in the pleadings filed in the District Court of the State of Nebraska nor was any title right, privilege or immunity specially set up or claimed under the constitution of the United States until the filing of his petition for a rehearing after judgment in the Supreme Court of the State of Nebraska.

3. The title, right, privilege and immunity claimed under the constitution of the United States by the plaintiff in error was not specially set up or claimed at the proper time or in the proper way and was not specially set up or claimed until the petition for a rehearing after judgment in the Supreme Court of the State of Nebraska.

WHEREFORE the defendant in error moves that said cause be dismissed out of said court.

HENRY S. GREEN,
By W. R. GREEN,
ED. P. SMITH,
His Attorneys.

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No. 119

BRIEF FOR DEFENDANT IN ERROR.

ED. P. SMITH, and
W. R. GREEN,
Attorneys for Defendant in Error, and of Counsel.

In the Supreme Court of the United States.

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Plaintiff in Error,

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BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

Counsel for plaintiff in error states the issues in this case and the facts giving rise thereto, with substantial correctness, except that it is said that the petition of the plaintiff was in fact an action to redeem. The plaintiff did, in fact, in his petition offer to pay all legal taxes against the lands in controversy. The taxes, however, were a small amount. The defendant had bid in the land for its appraised value at the foreclosure sale for the aggregate sum of several thousand

dollars. The plaintiff did not offer to pay the amount required to redeem from these sales, nor indeed to pay defendant anything, for the taxes would have been payable to the state authorities.

An examination of the plaintiff's petition will show that the action was a collateral attack upon the foreclosure proceedings, based on the allegation of lack of jurisdiction in the *nisi prius* court.

I.

Before considering the case on its merits, the attention of the court ought to be called to the fact that the question now before it was not raised or determined until the second application for a rehearing in the Supreme court of Nebraska. The pleadings in the case contained no reference to the claim now made, that the statute in question was invalid and did not afford due process of law. It was not even raised in argument when the cause was first submitted to the Supreme court of Nebraska, except by an incidental reference thereto. The original opinion of the Nebraska Supreme court did not refer to the question of the constitutionality of the statute, and it therefore seems to us that the plaintiff in error is not now entitled to have the writ of error considered upon its merits, but that the same ought to be dismissed.

II.

Coming now to a question of whether the proceedings under the Nebraska statute were such as granted to the plaintiff "due process of law," we think it will be easy to demonstrate the correctness of the rulings of the lower court. While the procedure is somewhat rare, there was nothing novel therein, for it is as old as this

court and has been affirmed over and over again in the state courts. It was not a summary proceeding except that there was no trial by jury. There was notice to every one that had an interest in the land, a trial upon evidence heard, and an opportunity for every one to come into court and present his claim to the lands and resist the claims of the plaintiff in the foreclosure suits.

The statute in effect provided for proceedings *in rem* by directing that the action might be brought against the land itself, and the provision that the deed should be an absolute bar as against all persons was but a declaration of the familiar principle that judgments *in rem* are valid against all the world, whether made parties or not, if only the court has jurisdiction of the *res*.

It is, as we shall show, almost elementary that in actions *in rem* a party may be divested of his interest in lands, though not specifically made a party to such proceeding, and that in such cases he is held to have had his day in court and to have had the benefit of "due process of law."

We shall take up the contentions of counsel for plaintiff in error in what we deem their logical order, and will say at the outset that it is a matter of surprise that there should be any claim that the proceedings to enforce the tax liens were not actions *in rem*, for we had supposed that this matter was beyond the pale of discussion or argument.

On page 71 of the Transcript will be found the petition in one of the foreclosure cases, entitled Farmers' Loan & Trust Co., plaintiff, vs. Henry A. Root, and the northeast quarter of section 27, township 31, range 3

west of the 6th p. m., defendants. It may be said in this connection that all of the petitions are in the same general form, as well as all of the notices of suit.

It will be observed that the action is strictly *in rem*. In the first instance it was so treated by opposing counsel, and it is difficult now to understand how it can otherwise be claimed. The action was against the *res*, which was made defendant. It could by no possibility become one *in personam*, and being for the condemnation of the real estate was strictly *in rem*. Under all of the authorities it was *the land that owed the debt*, and it was now the land that must be condemned to the payment thereof. Mr. Cooley, in his work on Taxation, section 15, says: "A tax is not a debt due by the owner of the property."

In Blavins vs. Smith, 13 L. R. A. 441, the same rule is laid down, citing Blackwell on Tax Titles, sec. 954, and Jones vs. Devine, 8 Ohio St. 430.

> "A judgment for taxes, for the partition of property, or the foreclosure of a lien is *in rem*, if the proceeding is against the property or against all owners and claimants thereof, though generally such judgments are against designated persons, and in effect are restricted to their interests."
> Freeman on Judgments, sec. 607, page 1055.

Pritchard vs. Madren, 24 Kan., 349; Chancey vs. Wass, 35 Minn., 1, and Ball vs. Ridge Copper Co., 118 Mich., 7, are all parallel cases involving the foreclosure of tax liens, the only difference being that the plaintiff in these cases was not a private individual, but as we now understand, there is no claim that this would make

any difference. In each of these cases it was held that the action was strictly *in rem*.

Freeman vs. Anderson, 119 U. S. 185, cited by counsel, is not an authority for his position. On the contrary, the distinction made by Mr. Justice Field between actions *in rem* and actions *in personam* makes it clear that the tax proceedings involved herein were strictly *in rem*. The learned justice says, in delivering the opinion of the court:

> "Actions *in rem*, strictly considered, are proceedings against property alone, treated as responsible for the claims asserted by the libellants or plaintiffs."

Such was the case here, the land being, under the authorities, responsible for the claim of the plaintiff. The court goes on to say:

> "The property itself is in such actions the defendant, and its forfeiture or sale is sought * * * * * for debts or obligations for which by operation of law it is liable."

So in the case at bar the land was the defendant and its sale was sought for the tax obligation for which it was liable.

It is true that further on in the opinion actions for the enforcement of mortgages and other liens are spoken of as being only *quasi in rem*, but the mortgages and other liens referred to are obviously included in what is termed a large class of cases which the opinion says are brought against persons and only seek to subject certain property of those persons to the discharge of the claims asserted. In the same paragraph of the opinion the court says with reference to this class of actions.

> "They differ, among other things, from actions which are strictly *in rem*, in that the interest of the defendant is alone sought to be affected, that citation to him is required, and that judgment therein is only conclusive between the parties."

It is clear, therefore, that the learned justice was speaking simply of such actions for the enforcement of mortgages and other liens as sought to reach only the interest of the defendant therein, and in which the property itself was not proceeded against.

If the construction claimed by counsel be put upon the statement in the opinion, then an action to enforce a lien against a vessel, which every one concedes is an admiralty proceeding strictly *in rem*, must be held to be only *quasi in rem*, which clearly the learned justice could not have intended to hold. The case, instead of being an authority in favor of the contention of plaintiff in error, is against it, and shows clearly that the action under consideration was strictly *in rem*.

In Woodruff vs. Taylor, 20 Vt., 65, it is said:

> "A judgment *in rem* is an adjudication pronounced upon the *status* of some particular subject matter, by a tribunal having competent authority for that purpose. It differs from a judgment *in personam* in this, that the latter judgment is in form, as well as substance, between the parties claiming the right, and that it is so *inter partes* appears by the record itself. It is binding only upon the parties appearing to be such by the record, and those claiming by them. A judgment *in rem* is founded on a proceeding instituted not against the person as such, but against, or upon, the thing or subject

matter itself, whose state or condition is to be determined. It is a proceeding to determine the state or condition of the thing itself, and the judgment is a solemn declaration upon the *status* of the thing, and it *ipso facto* renders it what it declares it to be." This definition clearly includes the case at bar.

There can be no contention over the doctrine laid down by the chief justice in the case of Tyler vs. The Judges, 55 N. E., 812. The legislature does not have the power to change an action for a personal claim to one *in rem*, and this is also true where only the interest of some particular person or persons is sought to be reached. It follows as a matter of course that the legislature cannot provide for anything except notice to the persons, in actions which are of this character and merely *in personam* or *quasi in rem*. This is all which is held in that case, and to this we agree.

III.

That plaintiff's grantor was not made a party to the foreclosure proceedings is entirely immaterial. The rule as laid down in Herman on Estoppel is as follows: (Section 296.)

"In many states, as to proceedings to foreclose tax claims, the proceedings are *in rem* against the land, and all persons are interested and bound by the judgment."

Citing Pritchard vs. Madren, 24 Kan., 349, in which the opinion was written by Justice Brewer of this court.

Mr. Wells, in his work on Res Adjudicata, page 507, quoting from Monroe vs. Douglas, 4 Sandf., Ch. 182, says:

"Of course specific parties are not necessary; where the subject matter of the suit is *res* is within the territorial dominion of the sovereign power under the authority of which the court acts, it is within the jurisdiction of such court. The persons or domicile of the parties proceeded against is not important in such cases in determining the question of jurisdiction. They would, on the other hand, be all important if the proceedings were purely *in personam*."

Judge Cooley, in his work on Taxation, page 672, with reference to proceedings for the enforcement of tax liens against land, says:

"Proceedings of this nature are not usually proceedings against parties, nor, in the case of lands, or interest in lands, can they be. They are proceedings with regard to the land itself, rather than to the owners of the land, and if the owners of the land are named in the proceedings, and personal notice is provided for, it is rather from tenderness to their interests and in order to make sure that an opportunity for a hearing shall not be lost to them, than from any necessity that the case shall assume that form."

The above language is cited with approval in Ball vs. Copper Ridge Co., 118 Mich., 7.

In his work on Constitutional Limitations, at page 498, the same learned author lays down the rule as follows:

"Cases are said to proceed *in rem* because they take notice of the thing in controversy, rather than of the parties concerned, and process is served upon that which is the object of the suit without specifically noticing the interested parties."

It will be observed, therefore, that it is not necessary that any person or persons should be named as parties to actions *in rem*, and indeed that it is one of the characteristics of an action *in rem* that it proceeds against the thing itself upon which notice is served and which is the only necessary party defendant in the action.

The citations from Mr. Cooley's work have an important bearing upon other matters in controversy in this case and will be hereafter referred to.

IV.

It is urged that the plaintiff's grantor had no opportunity or right to appear and defend in the foreclosure suits but this claim is contrary to all rules with reference to actions *in rem*.

In Mankin vs. Chandler, 2 Brock, 127, it was held that in a proceeding *in rem* the whole world are regarded as parties, and any person whomsoever having an interest in the property may interpose a claim or prosecute his appeal from the sentence.

In Freeman vs. Alderson, 119 U. S. 185, it is said:

> "The court acquires jurisdiction over the property in such cases (that is, cases *in rem*) by its seizure, and of the subsequent proceedings by public citation to the world, *of which the owner is at liberty to avail himself by appearing as a claimant in the case*."

Seizure, however, is not necessary where the property is land within the jurisdiction of the court.

Chancey vs Wass, 35 Minn., 1.
Tyler vs. The Judges, 55 N. E., 812.
Hamilton vs. Brown, 161 U. S., 256.

And it very definitely appears from these citations that the owner can always appear as claimant, if he desires.

In the Kentucky Tax Cases, 115 U. S., 321, it was held that where there was no provision of the statute any one interested might be permitted to interpose a defense.

The rule that any claimant may appear is a necessary corollary of the rule that no specific parties are necessary. No court has, or of course ever would, hold that a person who had a defense could be precluded from presenting it and then held to be barred by the judgment.

It will thus be seen that the plaintiff's grantor could, if he so desired, have appeared in the foreclosure proceedings and set up any claim that he might have had against the validity of the tax lien.

V.

If no personal defendants are necessary, it follows as a matter of course that it is not necessary to give any notice in actions strictly *in rem* to defendants by personal citation. It was at one time contended that no notice whatever was necessary in actions *in rem*, where seizure was made of the property. The rule now established by the weight of authority is, that notice is necessary, but that within reasonable limits the legislature may prescribe the nature of such notice, and that when notice is given in conformity with the legislative provisions, it affords everyone interested in the property due process of law.

In Monroe vs. Douglas, 4 Sandf., Ch. 182, it is said:

"Having jurisdiction of the subject matter *in rem*, the local regulations and laws of the country in which the court proceeds must determine what process or what form of notice shall suffice."

In Woodruff vs. Taylor, 20 Vt., 73, it was said that the notice required "is such as the law presumes will be most likely to reach the person interested."

In The Matter of the Empire State Bank, 18 N. Y., 199 (215), it is said:

"Where the legislature has prescribed the kind of notice, by which it is reasonably probable that the party proceeded against will be apprised of what is going on against him, and an opportunity afforded him to defend, I am of the opinion that the courts have not the power to pronounce the proceeding illegal."

This decision was reaffirmed in Happy vs. Mosher, 48 N. Y., 313. In Campbell vs. Evans, 45 N. Y., 356 (359), a case where live stock was distrained, it was said:

"In analogy to proceedings in other cases *in rem*, or for enforcing specific liens upon or forfeiture of property, the legislature has provided for notice, in such form and for such length of time as they thought reasonable and best calculated to inform the owner of the proceedings, and give him an opportunity to be heard."

And further on in the same opinion it was held that

"It was peculiarly within the province of the legislature to prescribe the notice and direct the manner of service."

The court therefore held the proceedings constitutional.

To the same effect is Hogle vs. Mott, 62 Vt., 255.

In 50 L. R. A., pages 599-600, is found an elaborate brief of the authorities bearing on the question of what process is necessary to give jurisdiction in actions *in rem*, the learned author showing that the authorities hold that within reasonable bounds it is for the legislature to determine this question.

Whatever may have been the provisions of the Nebraska statute in controversy, it is only necessary in actions strictly *in rem* to serve notice on the *res*, and when notice is so served it is notice to the world. It is so held in Cross vs. Armstrong, 44 Ohio St., 624.

In Branch Bank vs. Hodges, 12 Ala., 118, it was held with reference to actions *in rem*, that

> "Every person may make himself a party, and appeal from the sentence; but notice of the controversy is necessary in order to become a party, and it is a principle of natural justice, of universal obligation, that before the rights of an individual can be bound by a judicial sentence, he shall have notice, either actual or implied, of the proceedings against him. Where the proceedings are against the person, notice is served personally, or by publication; where they are *in rem* it is served upon the thing itself. A notice served on a thing, will give information to all who have any interest in it; every such person may therefore be considered a party."

It will be remembered that we have already cited from Cooley on Const. Lim, the statement that "process is served upon that which is the object of the suit without specifically noticing the interested parties" in actions strictly *in rem*.

Mr. Freeman, in his work on Judgments, Sections 606-607, lays down the rule as follows:

> "Laws exist under which property is responsible for taxes imposed upon it. These same laws often authorize the obligation by them imposed upon the property to be enforced by proceedings in which no service of process is required *except upon such property*. The judgment resulting from such a procedure is *in rem*, and satisfaction thereof is produced by an execution authorizing the sale of the property. The sale acts upon the property, and, in so acting, necessarily affects all claimants thereto."

The learned author also says on the following page:

> "Such a judgment, whenever binding upon any person is equally binding upon all persons."

In following that of the statute provided as it unquestionably did, for service upon the *res*, it provided for all that is necessary in actions *in rem*, regardless of whether it provided for notice to "all persons interested in said real estate."

But while process may be served upon the *res* and thus all interested parties notified, even this is not necessary, for no particular form of notice is required in actions *in rem;* and we shall show that the authorities uniformly hold that it is not necessary that the notice should be directed to any person or persons, or even to all persons interested in the property, but only that it should be of such nature as to apprise parties who read the same that their interests would be affected.

It follows that if the statute provided, as it unquestionably did, for service upon the *res*, it provided for all

that is necessary in actions *in rem*, regardless of whether it provided for notice upon "all persons interested in said real estate."

In Ball vs. Ridge Copper Co., *supra*, 118 Mich., 7, it appears that under the Michigan statute the auditor general may file in the Circuit court in chancery a petition for the sale of lands delinquent for taxes, and that thereupon the court shall make an order fixing a day for hearing. The statute further provides:

> "The publication of the order and petition aforesaid shall be equivalent to a personal service of notice on all persons who are interested in the lands specified in such petition of the filing thereof, of all proceedings thereon, and of the sale of the lands under the decree, and shall give the court jurisdiction to hear such petition."

The defendant, which was a resident corporation, whose land had been sold, contended that this provision did not afford it due process of law. It will be observed that there was no provision for a notice directed to any one, but there was simply published information of the filing of the petition and the order for its hearing. The court said:

> "The statute makes the publication the equivalent of personal service, and it is therefore the duty of the owner to watch the proceedings provided for by the statute for the foreclosure of the lien, and interpose any objection he may have to the validity of the tax. The purpose of the statute is to give every person his day in court, in an equitable proceeding."

The court quotes from Judge Cooley the provision from his work on Taxation heretofore cited, to the effect

that proceedings of this nature are not usually proceedings against parties but have regard to the land itself, rather than the owners thereof, and after elaborate discussion of the authorities concludes with the holding that the Michigan statute afforded the complaining party due process of law.

Following the holding in the above case we urge that it was the duty of all parties interested in the land in controversy to "watch for the proceedings provided for by the statute for the foreclosure of the lien, and interpose any objection they might have to the validity of the tax."

On page 78 of the Transcript will be found one of the notices under consideration. No one reading this notice could fail to understand the nature of the proceeding, and it was his duty equally in Nebraska as in Michigan to know the law; he must be held to have known that this proceeding cut off any interest that he might have in the real estate described therein, and he must, equally with the complainant in Michigan, have been afforded due process of law.

In Francis vs. Grote, 14 Mo. App., 324, it appeared that the statute provided for publication of the delinquent list of taxes, which was to be a notice of application to the county for a judgment and sale by the order of court, and that the assessment and advertisement should impart notice to the owner. No provision was made for any further notice, but the county court could then proceed to judgment and order for sale. The party complaining of the proceedings was a resident of the county, and he claimed that the proceedings were unconstitutional by reason of his having received no

notice, and that he had not had his day in court. But the court said:

> "There is nothing in the objection. It has never been held that any revenue law was unconstitutional on the ground that it made no provision for personal service on the owner of the land sold for taxes."

The court added that similiar statutes had been held constitutional in Tennessee, Ohio, Indiana and Illinois.

It will be observed that in this class of cases as exemplified by the two last cited, no notice is given to any one as defendants nor is the publication specially directed to any party. On the other hand the publication simply states the nature of the proceedings sought to be carried on, so that any person who reads may be aware thereof, and this is all that is necessary.

It should be noted in this connection that while the notice must be a reasonable one, what would be reasonable in a tax case might not be reasonable in some other. But every one knows that his property will be sold for taxes, if the taxes are not paid, and the parties interested in the land in controversy were presumed to know the law, and that the sale under the provisions of the statute would be an absolute bar against them.

Davidson vs. New Orleans, 96 U. S. 97, while cited by counsel, is strongly against the position taken by plaintiff in error. Mr. Justice Bradley, in his opinion therein, says:

> "That in judging what is 'due process of law', respect must be had to the cause and object of the taking, whether under the taxing power, the

power of eminent domain, or the power of assessment for local improvements, or none of these: and if found to be suitable or admissible in the special case, it will be adjudged to be 'due process of law.' "

The proceedings in this case are strictly in accordance with that portion of the opinion of Justice Miller in the same case quoted by counsel. The law provided "for a mode of confirming or testing the charge in the ordinary courts of justice, with such notice to the person or proceeding in regard to the property as is appropriate to the nature of the case," and therefore, in the nature of things, "the proceedings did not deprive the owner of his property without due process of law."

We cannot conceive of any notice more appropriate to an action for the condemnation of land to the payment of taxes than the one which was published in this case. It is directed to the land itself, and therefore shows that no personal claim was sought. It describes fully the nature of the action and gives full warning of the proceedings to be taken.

VI.

It is claimed by counsel that plaintiff's grantor was a resident of the state, and it seems to be contended for that reason that he could not be served with notice by publication.

The record does not disclose the residence of Patrick, and if it were necessary to the jurisdiction of the court, the presumption would be that he was a non-resident. But however the fact may be, it is immaterial in this case.

In the cases heretofore cited of Pritchard vs. Madren, 24 Kan., 349; Chancey vs. Wass, 35 Minn., 1, and

Ball vs. Ridge Copper Co., 118 Mich., 7, it appeared that the objecting parties were residents, who received no notice other than the general notice by publication, not being named as defendants.

In Campbell vs. Evans, 45 N. Y., 256, also heretofore cited, it was said that in such cases it was immaterial whether the parties interested were residents or whether the owner was known.

In Hamilton vs. Brown, 161 U. S., 256, it was held that in actions *in rem* notice might be served by publication upon residents.

In Shepard vs. Ware, 48 N. W. R., 773, (46 Minn., 184), the same holding was made after a full discussion of the authorities.

In all of these cases the principal contention was that "due process of law" was not afforded by such service, but in each case the contrary was held.

To sum up this branch of the case, we insist that the notice was sufficient (1) because it was served upon the *res*, (2) because it was appropriate to the suit and reasonable and in accordance with the provisons of the statute, and (3) because it was entirely immaterial whether plaintiff's grantor, Patrick, was a resident or non-resident or named in the notice.

The rule is not that a defendant may be bound without notice even in an action *in rem*, but that a general notice is sufficient without naming him and he is held bound thereby.

VII.

Passing to the consideration of the provisions of the statute for notice, we contend that it has been miscon-

strued by counsel, although such misconstruction is immaterial under the authorities we have cited. Counsel argues that there is no provision for service upon anyone but the owner of the property. The language of the statute is:

> "Where the owner of the land is not known the action may be brought against the land itself, but in such case the service must be as in the case of a non-resident."

The contention that provision is only made for service upon the owner seems strange, especially in view of the fact that the provision only applies where the owner is unknown. If the owner is unknown, how can service be made upon him by publication or otherwise, except by a general notice? He cannot be named, for his name is not known. It is not intended that he should be a defendant for the same reason, and for the further reason that the action is against the land itself. The provision that "the service must be as in the case of a non-resident," is not limited to any particular person or persons or to the unknown owner. It is a general provision and must mean that whatever service is necessary and proper in the case must be made by publication. If the true rule is as we contend, that service is only necessary upon the thing, and that a notice in conformity with the provisions of the statute is sufficient, then it must be held that the notice in controversy contained not only all but more than was necessary. If it should be held contrary to these authorities that notwithstanding the action was one *in rem* a notice to all parties interested was necessary, even then the notice is sufficient, for it contained that provision.

If counsel be correct in their contention, there was no provision even for service on the land, although by express provision of the statute the action was to be commenced against it, and notwithstanding the manifest intention of the legislature to create an action *in rem*.

Errors on the part of legislative assemblies are numerous, but statutes like the one under consideration are always prepared by lawyers, and no lawyer could be so foolish as to suppose that the rights of all persons whomsoever could be barred simply by service on the owner, or that an action could be brought against the land itself without serving notice upon it. But the statute does not say that service must be made upon the "owner." It simply says that service must be made by publication in such case, that is, a case where the owner is unknown and the action is commenced against the land itself. In short, the statute simply provides the manner of serving the process or notice, but is silent as to who shall be served and as to the form of the notice.

These matters are left to be determined by the general rules which apply to actions of this nature. Were the action one *in personam*, personal citation that is, a naming of the defendant or defendants would be necessary according to the quotations heretofore made from Freeman vs. Alderson, *supra*. The action, however, being *in rem*, and specific parties not necessary, notice might be given to "all parties interested in said real estate," as was done in the notice, without specifically naming the parties. This, we contend, was not necessary, but if it was necessary, it was provided for by the statute. The form of the notice might have been specified in the statute, but not being specified, the statute clearly contemplated that such notice as was necessary

would be given, and provided the manner in which it might be served.

The provision for the foreclosure of a tax lien is extremely liberal in comparison with the ordinary summary process of collecting taxes. In most of the states, and in Iowa for example, a general notice is published describing the property which is delinquent and the amount of taxes against it, and reciting that sale will be made thereof at a certain date. The owner or person interested in the lands has no opportunity of resisting the sale other than by paying the claim against the land. There is no opportunity given for a hearing and no way in which one could be had. If a party interested desires to contest the proceeding, he can do so only in a proceeding instituted by himself, in which nearly every presumption is against him. Under the liberal provisions of the Nebraska statute in question there was notice of the hearing, and an opportunity to be heard, with the fullest opportunity for any person interested in the land in question to contest the charge made against it. If it should now be held that because the state has seen fit, instead of resorting to a summary proceeding; to give this opportunity to the owner, that the state must give personal notice to all persons interested in the land, then it is obvious that it must fall back upon the usual summary proceeding, to the great injury of all persons who in good faith desire to contest the charges made against their lands.

It would be strange indeed if the court should hold that the more summary the process the easier to dispense with notice; and the more liberal the proceeding the greater the strictness with which the state must be controlled. Public policy requires that the state should

have its taxes, and the laws should not be so construed as to enable their evasion. On the other hand the state should not be required, by over technical construction of the rule of service, to resort to methods which unduly harass the citizen without any benefit to itself.

"Due process of law" in tax proceeding must necessarily depend largely upon what has been the practice from the earliest times. For this reason very summary proceedings have been sustained, because such has always been the practice. If summary proceedings can be sustained as providing "due process of law," with how much more reason can a court sustain a proceeding like the one under consideration?

In Chauncey vs. Wass, 35 Minn., 1, heretofore cited, a case for the foreclosure of a tax lien, we find quoted with approval the following from De Treville vs. Smalls, 98 U. S., 525:

> "We are not unmindful of the numerous decisions of state courts which have construed away the plain meaning of statutes providing for the collection of taxes, disregarding the spirit and often the letter of the enactments, until of late years the astuteness of judicial refinement had rendered almost inoperative all legislative provisions for the sale of land for taxes. * * * * There is no possible excuse for not enforcing such statutes according to their letter and spirit."

It is unnecessary to say that where a statute can be construed in such a manner as to make it conform to the constitution, that construction ought to be given it. The Nebraska Supreme court has passed upon the form of notice in this case and has held that it conformed to

the provisions of the statute, and its construction is entitled to be followed by this court. It has twice, in the cases of Carmen vs. Harris, 61 Neb., 40, and Grant vs. Bartholomew, 57 Neb., 673, held that the action is one *in rem*.

In these cases special stress was laid upon the fact that no claim could be made against any person for the taxes under consideration, and it was held in the last named case that real estate taxes were a charge against the real estate only, and not a debt or obligation of the owner.

After a full hearing and rehearing nine members of the court of that state have pronounced the proceedings constitutional, and held that they afforded the plaintiff in error due process of law.

We insist that under the authorities his grantor was properly served with notice, has had his day in court and opportunity to defend, and that plaintiff's writ of error ought to be dismissed.

ED. P. SMITH and
W. R. GREEN,
Attorneys for defendant in error and of counsel.

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In the Supreme Court of the United States

OCTOBER TERM, 1903.

ALVIN L. LEIGH,
Plaintiff in Error,

vs.

HENRY S. GREEN,
Defendant in Error.

No. 119.

SUPPLEMENTAL BRIEF FOR DEFENDANT IN ERROR.

ED. P. SMITH, and
W. R. GREEN,
Attorneys for Defendant in Error, and of Counsel.

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SUPPLEMENTAL BRIEF FOR DEFENDANT IN ERROR.

The extremely short time given by the rules made it necessary to prepare the former brief in the space of a day, and the following supplemental brief is submitted in support of the position of the defendant in error, that due process of law in the collection of taxes does not require the ordinary procedure, even though resort is had to the courts to enforce or establish the lien of the tax and a sale thereunder. Upon this point we merely cite the leading authorities.

The constitutional requirement of due process of law relates to the remedy or means used and not to substantive law, and the complainants property is not taken from him without due process of law if he is allowed a hearing at any time before the lieu of the assessment becomes force.

Board vs. Collins, 46 Nebr., 627

C. B. & Q. vs. State, 47 Nebr., 549.

It is sufficient if a notice is given which will enable the property owner to obtain a hearing before some tribunal and contest the validity and fairness of the taxes assessed against him.

Gillmore vs. Hentig, 33 Kan., 405.

Board vs. Collins, 46 Nebr., 427.

The notice is to be considered in connection with the provisions of the statute which the tax payer is bound to know.

Lent vs. Tillson, 72 Cal., 404.

(Affirmed 140 U. S. 316.)

Kas. City vs. Duncan, 135 Mo., 571.

Davis vs. City, 86 Cal., 37.

Ball vs. Ridge Copper Co., 118 Mich., 7.

The constitution should be read into the statute with relation to notice.

Lent vs. Tillson, 14 Pac., 71.

Ky., Tax cases 115 U. S. 316.

Paulsen vs. City of Portland, 149 U. S. 30.

Gilmore vs. Hentig, 33 Kas., 405.

It is not necessary to adopt the same procedure collecting taxes through the courts as in a strictly judicial proceeding.

City of Duluth vs. Dibble, 62 Minn., 18.

King vs. Mullen, 171 U. S. 404.

Murray vs. Hoboken Land Co., 18 How., 272.

ED. P. SMITH, and
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Supreme Court of the United States.

No. 119.—October Term, 1903.

Alvin L. Leigh, Plaintiff in Error, vs. Henry S. Green. } In error to the Supreme Court of the State of Nebraska.

[February 23, 1904.]

The facts essential to the determination of this case are briefly summarized as follows: Irwin Davis was the owner of certain lands in Knox County, Nebraska. On the 24th day of November, 1880, an action was begun by Algernon S. Patrick against Davis, in the District Court of the county, and an attachment was issued and levied upon the lands. The case was afterwards removed to the Circuit Court of the United States for the District of Nebraska, on October 18, 1882, where on January 21, 1890, an order for the sale of the lands in question was made for the satisfaction of the judgment, and the same were sold on May 15, 1894, by the United States marshal to Lionel C. Burr. Burr afterwards conveyed the lands to Crawford and Peters. On June 23, 1894, Crawford and Peters conveyed the premises to Alvin L. Leigh, the plaintiff in error in the present case.

Pending said attachment proceedings, on December 28, 1882, a deed was filed for record in the clerk's office of Knox County, purporting to convey the lands to Henry A. Root on October 8, 1880. Afterwards, on May 12, 1894, a decree was rendered in the District Court of Douglass County, Nebraska, in a cause wherein said Patrick was plaintiff and Davis and others were defendants, setting aside the deed from Davis to Root as fraudulent and void as against the said Patrick.

In 1891 actions were brought in the District Court of Knox County, wherein the Farmers' Loan and Trust Company was plaintiff and Henry A. Root and different subdivisions of the lands were defendants, for the foreclosure of certain tax liens, which actions, taken together, cover the lands in controversy in the present suit.

In the same year, 1891, decrees were entered in those cases, and orders made directing the sale of the lands for the satisfaction of the amounts found due by the decrees. In pursuance of said decrees the lands were sold by the sheriff to Henry S. Green, defendant in error in the present action. The deeds of conveyance were made and delivered to him by the sheriff. Plaintiff in error claims title because of the attachment proceedings, and defendant in error bases his claim to title upon the proceedings had for the foreclosure of the tax liens. This suit was brought by the plaintiff in error Leigh, in the District Court of Knox County, to quiet title to the lands in controversy.

In that court a decree was rendered in favor of the plaintiff in error Leigh, which decree was reversed by the Supreme Court of Nebraska, and the cause remanded with directions to render a decree in favor of the defendant Green.

This writ of error is prosecuted to review the judgment of the Supreme Court of Nebraska.

Mr. Justice DAY, after making the foregoing statement, delivered the opinion of the Court.

A motion is made to dismiss because the claim of impairment of a right secured by the Fourteenth Amendment was not made in the courts of Nebraska until the motion for rehearing was filed in the Supreme Court. We are unable to discover a specific claim of this character made prior to the motion for rehearing. In the motion reference is made to the failure of the Nebraska Supreme Court to decide the claim theretofore made, that the statute of Nebraska was unconstitutional because of the alleged violation of the right to due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States. Be this as it may, the Supreme Court of Nebraska entertained the motion and decided the Federal question raised against the contention of the plaintiff in error. In such case the question is reviewable here, although first presented in the motion for rehearing. (*Mallett* v. *North Carolina*, 181 U. S. 589.)

The Federal question presented for our consideration is briefly this: Is the Nebraska statute under which the sale was made and under which the defendant in error claims title, in failing to make provision for service of notice of the pendency of the proceedings upon a lienholder, such as Patrick, a deprivation of property of the lienholder without due process of law within the protection of the Fourteenth Amendment?

The statutes of Nebraska under which the conveyances were made to the Farmers' Loan and Trust Company are given in the margin.*

*SEC. 1. That any person, persons or corporation having by virtue of any provisions of the tax or revenue laws of this State a lien upon any real property for taxes assessed thereon, may enforce such lien by an action in the nature of a foreclosure of a mortgage for the sale of so much real estate as may be necessary for that purpose and costs of suit.

SEC. 2. That any person, persons or corporation holding or possessing any certificate of purchase of any real estate, at public or private tax sale, or any tax deed, shall be deemed entitled to foreclose such lien under the provisions of this act, within any time not exceeding five years from the date of tax sale (not deed) upon which such lien is based; *And provided*, That the taking out of a tax deed shall in nowise interfere with the rights granted in this chapter.

SEC. 3. All petitions for foreclosure or satisfaction of any such tax lien shall be filed in the District Court in chancery, where the lands are situated.

The evident purpose of section 4, where the owner of the land is unknown, is to permit a proceeding *in rem*, against the land itself, with a provision for service as in case of a non-resident. By section 6 it is provided that in cases where the land itself is made defendant the deed shall be an absolute bar against all persons, unless the court proceedings are void for want of jurisdiction. The object and intent of the action is defined to be "to create a new and independent title, by virtue of the sale, entirely unconnected with all prior titles."

The Supreme Court of Nebraska has held that the term "owner," as used in the fourth section, applies to the owner of the fee, and does not include a person holding a lien upon the premises. It is this section (4)

SEC. 4. Service of process in causes instituted under this chapter shall be the same as provided by law in similar causes in the District Courts, and where the owner of the land is not known the action may be brought against the land itself, but in such case the service must be as in the case of a non-resident; if the action is commenced against a person who disclaims the land, the land itself may be substituted by order of court for the defendant, and the action continued for publication.

SEC. 5. All sales of lands under this chapter, by decree of court, shall be made by a sheriff or other person authorized by the court, in the county where the premises or some part of them are situated.

SEC. 6. Deeds shall thereupon be executed by such sheriff, which shall vest in the purchaser, the same title that was vested in the defendant to the suit at time of the assessment of the tax or taxes against the same; and such deed shall be an entire bar against the defendant to such suit, and against all parties or heirs claiming under such defendants; and in case the land itself is made defendant in the suit, the deed shall be an absolute bar against all persons, unless the court proceedings are void for want of jurisdiction; the object and intent of this action being to create a new and independent title, by virtue of the sale, entirely unconnected with all prior titles.

SEC. 7. The proceeds of every sale made under a decree, by virtue of this chapter, shall be applied to the discharge of the debt, adjudged by the court to be due and of the costs awarded, and if there be any surplus it shall be brought into court for the use of the defendant, or of the person entitled thereto, subject to the order of the court.

SEC. 8. If such surplus, or any part thereof, shall remain in court, for the period of three months, without being applied for, the court may direct the same to be put out at interest, under the direction of the court, for the benefit of the defendant, his representatives or assigns, to be paid to them by the order of the court; the party to whom said surplus shall be loaned to be designated by the court, and the sureties, upon which said money is loaned, to be approved by the judge.

SEC. 9. All lands sold by the sheriff by virtue of this act shall be appraised advertised and sold as upon execution and the title conferred by his deed shall be entitled to all the presumptions of any judicial sale.

SEC. 10. This act shall be construed as cumulative and not exclusive, in respect to the remedy for enforcing liens, and collecting delinquent taxes, by sale of property or otherwise, in the cases herein provided for, and shall in nowise interfere with, alter or amend the existing revenue laws of the State.

and section 6 which are alleged to be in conflict with the Fourteenth Amendment. The argument for the appellant concedes that the State may adopt summary or even stringent measures for the collection of taxes so long as they are "administrative" in their character; and it is admitted that such proceedings will not divest the citizen of his property without due process of law, although had without notice of assessments or levy, or of his delinquency and the forfeiture of his lands. But the argument is, that when the State goes into court and invokes judicial power to give effect to a lien upon property, although created to secure the payment of taxes, the same principles and rules prevail which govern private citizens seeking judicial remedies, and require service on all interested parties within the jurisdiction. The right to levy and collect taxes has always been recognized as one of the supreme powers of the State, essential to its maintenance, and for the enforcement of which the legislature may resort to such remedies as it chooses, keeping within those which do not impair the constitutional rights of the citizen. Whether property is taken without due process of law depends upon the nature of each particular case. If it be such an exercise of power "as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the classes to which the one in question belongs," it is due process of law. (Cooley on Const. Lim., 7th ed. 506.)

The most summary methods of seizure and sale for the satisfaction of taxes and public dues have been held to be authorized and not to amount to the taking of property without due process of law, as a seizure and sale of property upon warrant issued on ascertainment of the amount due by an administrative officer, (*Murray* v. *Hoboken Land Co.*, 18 How. 272;) the seizure and forfeiture of distilled spirits for the payment of the tax, (*Henderson* v. *Distilled Spirits*, 14 Wall. 44.) The subject underwent a thorough examination in the case of *Davidson* v. *New Orleans*, (96 U. S. 97,) in which Mr. Justice Miller, while recognizing the difficulty of defining satisfactorily due process of law in terms which shall apply to all cases and the desirability of judicial determination upon each case as it arises, used this language: "That whenever by the laws of a State, or by State authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be for the whole State or of some limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections."

In the present case, the argument is that, as the State has not seen fit to resort to the drastic remedy of summary sale of the land for delinquent

taxes, but has created a lien in favor of a purchaser, at tax sale, after permitting two years to elapse in which the owner or lienholder may redeem the property, it has in authorizing a foreclosure without actual service, taken property without due process of law, because the proceedings and sale to satisfy the tax lien do not require all lienholders within the jurisdiction of the court to be served with process. If the State may proceed summarily, we see no reason why it may not resort to such judicial proceedings as are authorized in this case. And if the State may do so, is the property owner injured by a transfer of such rights to the purchaser at the tax sale, who is invested with the authority of the State? In *Davidson* v. *New Orleans*, *supra*, the objection was made that the State could not delegate its power to a private corporation to do certain public work, and, by statute fix the price at which the work should be done. In that connection, speaking of the *Slaughter-house cases* (16 Wall. 36,) Mr. Justice Miller said: "The right of a State to use a private corporation and confer upon it the necessary powers to carry into effect sanitary regulations was affirmed, and the decision is applicable to a similar objection in the case now before us."

In the statute under consideration, for the purpose of collecting the public revenue, the State has provided for the enforcement of a lien by the purchaser at a tax sale, and authorized him to proceed against the land subject to the tax to enforce the right conferred by the State. The State has a right to adopt its own method of collecting its taxes, which can only be interfered with by Federal authority when necessary for the protection of rights guaranteed by the Federal Constitution. In authorizing the proceedings to enforce the payment of the taxes upon lands sold to a purchaser at tax sale, the State is in exercise of its sovereign power to raise revenue essential to carry on the affairs of state and the due administration of the laws. This fact should not be overlooked in determining the nature and extent of the powers to be exercised. "The process of taxation does not require the same kind of notice as is required in a suit at law, or even in proceedings for taking private property under the power of eminent domain. It involves no violation of due process of law when it is executed according to customary forms and established usages, or in subordination to the principles which underlie them." (*Bell's Gap Railroad* v. *Pennsylvania*, 134 U. S. 232, 239.)

In authorizing the proceedings under the statute to enforce the lien of the purchaser, who has furnished the State its revenue in reliance upon the remedy given against the land assessed, the State is as much in the exercise of its sovereign power to collect the public revenues as it is in a direct proceeding to distrain property or subject it to sale in summary proceedings.

Nor is the remedy given in derogation of individual rights, as long recognized in proceedings *in rem*, when the Fourteenth Amendment was

adopted. The statute undertakes to proceed *in rem*, by making the land, as such, answer for the public dues. Of course, merely giving a name to an action as concerning the thing rather than personal rights in it cannot justify the procedure, if in fact the property owner is deprived of his estate without due process of law. But it is to be remembered that the primary object of the statute is to reach the land which has been assessed. Of such proceedings, it is said in Cooley on Taxation (2d ed. 527): "Proceedings of this nature are not usually proceedings against parties; nor, in the case of lands or interests belonging to persons unknown, can they be. They are proceedings which have regard to the land itself, rather than to the owners of the land; and if the owners are named in the proceedings, and personal notice is provided for, it is rather from tenderness to their interests, and in order to make sure that the opportunity for a hearing shall not be lost to them, than from any necessity that the case shall assume that form." And see *Winona Land Co.* v. *Minnesota*, (159 U.S. 537.)

Such being the character of the proceedings, and those interested having an opportunity to be heard upon application, the notice was in such form as was reasonably calculated to bring the same to the attention of those interested in the lands. In the present case the notice was in the form given in the margin.*

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* *Legal Notice.*

In the District Court of Knox County, Nebraska.

The Farmers' Loan and Trust Company, Plaintiff,
vs.
Henry A. Root and The Northwest Quarter of Section Twenty-two (22), Township Thirty-one (31), Range Three (3) West, of the 6th Principal Meridian, Defendants.

The State of Nebraska, Knox County, to the above-named defendants and all persons interested in said real estate:

You are hereby notified that the petition of plaintiff is now on file in the District Court of Knox County, Nebraska, wherein plaintiff claims that it purchased said real estate for taxes due thereon in the sum of twenty-four dollars and fifty-one cents at the tax sale held in said county on the 12th day of June, 1888; that under said sale it has paid subsequent taxes on said land as follows, to wit: on the 10th day of August, 1888, twenty-one dollars and seventy-nine cents, and on the 9th day of July, 1889, nineteen dollars and sixty-three cents, for which sum, with interest as provided by statute, plaintiff claims the first lien against said premises and asks the foreclosure thereof, and that the said property be sold to satisfy the amount due plaintiff, together with the further sum of ten per cent of said amount as attorney's fees and costs of suit. And you are further notified to appear and answer said petition on or before Monday, the 9th day of November, 1891, or the petition will be taken as true and judgment rendered accordingly.

Dated this 30th day of September, 1891.

FARMERS' LOAN AND TRUST COMPANY,
By M. J. SWEELEY, *Its Attorney.*

This notice was to all persons interested in the property. The lienholder, the Nebraska court, has held, may appear in court and set up his claim. The notice was good as against the world, and all that is necessary when the proceedings are *in rem:*

"Laws exist under which property is responsible for taxes imposed upon it. These same laws often authorize the obligation by them imposed upon the property, to be enforced by proceedings in which no service of process is required except upon such property. The judgment resulting from such a procedure is *in rem*, and satisfaction thereof is produced by an execution authorizing the sale of the property. The sale acts upon the property, and, in so acting, necessarily affects all claimants thereto." (Freeman on Judgments, sec. 606.)

When the proceedings are *in personam* the object is to bind the rights of persons, and in such cases the person must be served with process; in proceedings to reach the thing service upon it and such proclamation by publication as gives opportunity to those interested to be heard upon application is sufficient to enable the court to render judgment. (*Cross* v. *Armstrong*, 44 Ohio St. 613, 624.) Where land is sought to be sold and is described in the notice a technical service upon it would add nothing to the procedure where the owner is unknown. The publication of notice which describes the land is certainly the equal in publicity of any seizure which can be made of it.

In *Tyler* v. *Judges of the Court of Registration*, (175 Mass. 71,) the Supreme Judicial Court of Massachusetts upheld as constitutional an act providing for registering and confirming titles to lands, in which the original registration deprived all persons, except the registered owner, of any interest in the land, and the act gave judicial powers to the recorder after the original registration, although not a judicial officer, and there was no provision for notice before registration of transfer or dealings subsequent to the original registration. The majority opinion was delivered by Mr. Justice Holmes, then Chief Justice of Massachusetts. In the course of the opinion, speaking of the Massachusetts Bill of Rights and the Fourteenth Amendment, he said: "Looked at either from the point of view of history or the necessary requirements of justice, a proceeding *in rem* dealing with a tangible *res*, may be instituted and carried to judgment without personal service upon claimants within the State or notice by name to those outside of it, and not encounter any provision of either constitution. Jurisdiction is secured by the power of the court over the *res*."

In *Huling* v. *Kaw Kaw Valley Railway & Improvement Co.*, (130 U. S. 559,) it was held that notice by publication in proceedings to condemn land for railway purposes was sufficient notice to non-resident owners, and was due process of law as to such owners. So as to adjudications of titles of real estate within the limits of the State as against non-resident owners,

brought in by publication only. (*Arndt* v. *Griggs*, 134 U. S. 316–327; *Hamilton* v. *Lewis*, 161 U. S. 256–274.)

The principles applicable which may be deduced from the authorities we think lead to this result: Where the State seeks directly or by authorization to others to sell land for taxes upon proceedings to enforce a lien for the payment thereof, it may proceed directly against the land within the jurisdiction of the court, and a notice which permits all interested, who are "so minded," to ascertain that it is to be subjected to sale to answer for taxes, and to appear and be heard, whether to be found within the jurisdiction or not, is due process of law within the Fourteenth Amendment to the Constitution.

In the case under consideration the notice was sufficiently clear as to the lands to be sold; the lienholders investigating the title could readily have seen in the public records that the taxes were unpaid and a lien outstanding, which, after two years, might be foreclosed, and the lands sold and by the laws of the State an indefeasible title given to the purchaser. Such lienholder had the right for two years to redeem, or, had he appeared in the foreclosure case, to set up his rights in the land. These proceedings arise in aid of the right and power of the State to collect the public revenue, and did not, in our opinion, abridge the right of the lienholder to the protection guaranteed by the Constitution against the taking of property without due process of law.

The judgment of the Supreme Court of Nebraska is *Affirmed*.

True copy.

Test:

Clerk Supreme Court, U. S.